

VOL. II

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

-----  
UNITED STATES OF AMERICA

-vs-

10-CR-219S

TONAWANDA COKE CORPORATION  
MARK L. KAMHOLZ,

Defendants.  
-----

Proceedings held before the  
  
Honorable William M. Skretny, U.S.  
  
Courthouse, 2 Niagara Circle, Buffalo,  
  
New York on February 28, 2013.

APPEARANCES:

AARON J. MANGO,  
Assistant United States Attorney,  
ROCKY PAIGGIONE, Senior Counsel,  
U.S. Department of Justice,  
Appearing for the United States.

GREGORY F. LINSIN, ESQ.,  
JEANNE M. GRASSO, ESQ.,  
ARIEL S. GLASNER, ESQ.,  
Appearing for Tonawanda Coke Corporation.

RODNEY PERSONIUS, ESQ.,  
Appearing for Mark L. Kamholz.

Also Present: Lauren DiFillipo, Paralegal  
Sheila Henderson, Paralegal

Michelle L. McLaughlin, RPR,  
Official Reporter,  
U.S.D.C. W.D.N.Y.  
(716)332-3560

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I N D E X

DEFENDANTS' EXHIBITS

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1 (Jury not present in the courtroom.)

2 THE COURT: Good morning. There's nobody  
3 that I would better like to see than this group at  
4 this point.

5 All right. Anything that we have to take up  
6 preliminarily?

7 MR. LINSIN: Your Honor, I have one very  
8 brief matter I've already discussed with government  
9 counsel. I wanted to alert the Court to as well.  
10 Out of the abundance of caution, I wanted to bring  
11 to the Court's attention that Mr. Carlacci,  
12 subsequent to the events related to the indictment,  
13 and after the return of the indictment, has been  
14 very directly involved, I understand, in the civil  
15 negotiations with the company.

16 THE CLERK: Judge, excuse me. He's in the  
17 courtroom. I don't know if that matters.

18 MR. LINSIN: I do understand that, yes.

19 THE CLERK: Okay.

20 MR. LINSIN: -- in the civil negotiations  
21 with the company, and has been directly involved in  
22 discussing the resolution of the issues on the  
23 civil side of the case. What piqued it for me when  
24 I heard his testimony yesterday was in relation  
25 specifically is those pushing controls on the

1 battery, that remains an issue of very intense  
2 discussions between the two sides on the civil  
3 side. I certainly do not intend to get into any  
4 questions post-indictment with this witness per our  
5 discussions and the Court's direction. I just  
6 wanted to make clear, and government counsel has  
7 assured me they instructed the witness, that in  
8 response to questions on cross-examination, he  
9 should not voluntarily get into those topics or  
10 respond in a way that would reveal those  
11 discussions. And I just wanted to raise that as a  
12 preliminary matter.

13 THE COURT: It's a point well taken.  
14 Mr. Carlacci has heard that. He's here. And I  
15 take it, Mr. Mango, the government's on board.

16 MR. MANGO: Yes, your Honor. We've  
17 actually already instructed him on that. As we've  
18 said, we've dialogued on this prior to the start  
19 here. So yes, that's fine.

20 THE COURT: Okay. I think with that, the  
21 record will so reflect. My understanding -- we're  
22 ready to go. I do have a request, though, from  
23 juror number 8, Mrs. Palistrant --

24 THE CLERK: No, it's not. Sorry, Judge.  
25 It's Mrs. Finn.

1 THE COURT: No, it's not her?

2 THE CLERK: No, it's Mrs. Finn.

3 MR. PERSONIUS: Judge, at the end of the  
4 day yesterday, when the jurors were leaving, juror  
5 number 8 was actually smiling. Now, maybe it's  
6 because the day was over, but she was smiling.

7 THE COURT: I think that's probably it,  
8 and I'll judicially notice that if it's okay with  
9 you, Mr. Personius.

10 THE CLERK: It's my fault, Judge. It was  
11 Mrs. Finn.

12 THE COURT: All right. I have a request  
13 from juror number 11 to approach the bench on the  
14 matter, so I will hear that first if it's okay with  
15 everyone.

16 MR. PIAGGIONE: Yes, your Honor.

17 THE COURT: And after that, then I will  
18 call Mr. Carlacci back to the stand. And if  
19 there's any issue, I'll let everybody know. Okay.

20 MR. MANGO: Thank you, your Honor.

21 THE COURT: Okay. Please have a seat.  
22 Please bring the jury in, Chris. Good to see you  
23 this morning.

24 (Jury seated.)

25 THE COURT: Good morning, everybody.

1 THE JURY: Good morning.

2 THE COURT: Good to see you again. Just  
3 so you know, I had asked Chris to take care of the  
4 weather conditions for today. That's what  
5 happened.

6 COURT SECURITY OFFICER: I guess I crossed  
7 my fingers the wrong way.

8 THE COURT: All right. Please have a  
9 seat. Good to see everybody.

10 Mrs. Finn, can I see you just for a second,  
11 please. You haven't been bad or good or anything  
12 like that. Be careful.

13 (Discussion off the record.)

14 THE COURT: Okay. Mrs. Finn, thank you  
15 very much.

16 And -- okay. Ladies and gentlemen, we're ready  
17 to resume. I'm going to call Mr. Alfred Carlacci  
18 back to the witness stand. He remains under oath.  
19 He's the government's first witness. And we'll  
20 resume direct examination shortly.

21 Mr. Mango, I guess you're going to continue the  
22 examination?

23 MR. MANGO: Yes, your Honor.

24 THE COURT: Or you're not done yet?

25 MR. MANGO: No, not done yet.

1           THE COURT:   Okay.   All right.   If you want  
2   to get set up, and -- you know, we're back on, as  
3   everybody knows now, in the case of United States  
4   versus Tonawanda Coke Corporation and Mark L.  
5   Kamholz, the two defendants in this case.

6           All of the attorneys and parties and paralegals  
7   and support, and they're all here as you know, as  
8   you can see, and maybe towards the end of tomorrow  
9   or maybe on Monday we'll introduce or reintroduce  
10   everybody so you don't forget names and faces. I'm  
11   sure the faces you probably will not forget for a  
12   long time to come. But we'll try to keep names  
13   associated with that.

14          And, you know, I reiterate, and you know, just  
15   from what you've heard so far, that this is an  
16   important case. All right? It's important to both  
17   sides. It will be entrusted to you for your  
18   unanimous verdict down the road a little bit. We  
19   will continue to urge everybody to do what you've  
20   done, and we really appreciate it. I know today is  
21   kind of a hard day to get in. You made it on time.  
22   We're getting started on time. And we need to do  
23   that in order to move the case along. Keep your  
24   minds open until all of the evidence is in. Please  
25   approach all of this ultimately as fair as you can.



1 And the case needs to be decided, you know, without  
2 bias and prejudice, sympathy, all of that that we  
3 talked about so far.

4 We will redistribute the notebooks. Try to  
5 keep your notations limited to this case. That's  
6 always helpful to us. And we will get those  
7 distributed to you right way.

8 But I think we can start with examination. So  
9 again, thank you all. We appreciate it.

10 Mr. Mango, you're on once again.

11 MR. MANGO: Thank you, your Honor.

12 THE COURT: Okay. And Mr. Carlacci, good  
13 morning, and you remain under oath.

14 THE WITNESS: Good morning.

15 A L F R E D C A R L A C C I, having previously been  
16 duly sworn as a witness, testified further as  
17 follows:

18 CONTINUED DIRECT EXAMINATION BY MR. MANGO:

19 Q. Good morning, Mr. Carlacci.

20 A. Good morning.

21 Q. All right. Let's proceed.

22 MR. MANGO: If we could, please, Lauren,  
23 pull up Exhibit 19.06. I think that's where we  
24 left off, Mr. Carlacci.

25 THE COURT: How would anybody know that,

1 Mr. Mango? 19.06. Okay.

2 BY MR. MANGO:

3 Q. If we could go to the second page, this is the  
4 flow diagram. And I believe there was -- we may  
5 have figured out this liquor storage. Why don't  
6 you tell -- tell us what some of these important  
7 items are on here. You understand what this  
8 by-products flow diagram means?

9 A. Yes. Identifying most of the vessels in the  
10 by-products area. And this weak liquor storage --  
11 weak liquor is the water that's used to flush the  
12 mains, the coke oven gas mains, of tar. It's a  
13 storage tank for the -- for that water.

14 Q. Okay. And you see there's a primary CGA and  
15 secondary CGA cooler. What is the purpose of those  
16 items?

17 A. Those are coke oven gas coolers. Prior to the  
18 exhauster coming off the battery, the coke oven gas  
19 is cooled so that it becomes -- you know, you can  
20 pass that through the exhauster without causing  
21 much damage, and, therefore, continue to remove tar  
22 and other items from the gas.

23 Q. Okay. And down here I'll just put a little  
24 point there. You see the light oil removal box  
25 that's highlighted?

1 A. Yes.

2 Q. A little -- a little arrow. What is -- what is  
3 a light -- light oil removal? If you can explain  
4 for the jury what -- what light -- light oil is and  
5 how you get it out.

6 A. I believe this to be the light oil scrubber and  
7 storage tank where oil -- metal oil is used to  
8 remove benzene, toluene, and xylene.

9 Q. Okay. So --

10 THE COURT: And those are all three  
11 chemicals, is that right?

12 THE WITNESS: Yes, it is.

13 BY MR. MANGO:

14 Q. Okay. Now, during the light oil removal  
15 system, you're familiar in general terms with that  
16 system and how it works?

17 A. I don't have the details of that -- insides of  
18 that system, but the idea is to just to scrub those  
19 contaminants out of the coke oven gas.

20 Q. Is it a hundred percent effective?

21 A. No, it's not.

22 Q. All right. So the gas that -- after it leaves  
23 the light oil removal system or the scrubber you  
24 mentioned, there's still some amount of benzene,  
25 some amount of xylene, some amount of toluene, I

1 think you said?

2 A. Toluene, correct.

3 Q. Okay. Okay. I'd like to show you what's  
4 identified or marked for identification purposes,  
5 Government Exhibit 19.07.

6 MR. MANGO: And, your Honor, absent an  
7 objection, the government would move this into  
8 evidence as a business record of the DEC.

9 MR. LINSIN: No objection, your Honor.

10 MR. PERSONIUS: No objection, your Honor.

11 THE COURT: Okay. 19.07 received into  
12 evidence. No objection.

13 (Government's Exhibit 19.07 was received  
14 into evidence.)

15 BY MR. MANGO:

16 Q. Okay. Mr. Carlacci, can you tell the jury what  
17 we're looking at here? The date, who it's from,  
18 who it's too.

19 A. This is a letter from the department of Gary  
20 Foersch, the employee, to Tonawanda Coke, Mark  
21 Kamholz.

22 Q. Okay. And if we can focus in on that area,  
23 please.

24 Okay. So what is -- what is Gary Foersch  
25 telling Defendant Kamholz here?

1 A. He's requesting air applications for 15  
2 emission points.

3 Q. Okay. And these emission points all relate to  
4 what -- what part of the coke oven production  
5 facility at Tonawanda Coke Corporation?

6 A. All 15 items appear to be part of the  
7 by-product side of the plant.

8 Q. All right. And -- and it mentions that there  
9 was an inspection by Mr. Foersch on February 5th of  
10 1985? In the top line.

11 A. Yes, it does.

12 Q. Okay. And then as a result of that, he  
13 believed these 15 additional items needed -- needed  
14 to have certificates to operate?

15 A. Correct.

16 Q. Those are the Air 100s?

17 A. Correct.

18 Q. That we've already talked about?

19 A. Yes.

20 Q. All right. He also mentions that he's enclosed  
21 a modified process diagram.

22 If we can go to the second page of this  
23 document.

24 Okay. Is that -- that's what we just looked at  
25 in Exhibit 19.06, right?

1 A. Yes, it is.

2 Q. All right. Okay. If we can move on to  
3 Exhibit 19.08. Show you that for identification  
4 purposes. Government exhibit.

5 MR. MANGO: And absent an objection, your  
6 Honor, I would ask that this be offered into  
7 evidence as a record coming from Defendant Kamholz.

8 MR. LINSIN: No objection, your Honor.

9 MR. PERSONIUS: No objection, your Honor.

10 THE COURT: Okay. There being no  
11 objection, 19.08 received.

12 (Government's Exhibit 19.08 was received  
13 into evidence.)

14 MR. MANGO: Okay. If we can publish that,  
15 please.

16 BY MR. MANGO:

17 Q. Mr. Carlacci, if you can tell us what the date  
18 is, who this is from and who it's too, and then the  
19 subject of what this letter is getting at.

20 A. This is a cover letter from Mark Kamholz from  
21 Tonawanda Coke to the department Gary Foersch  
22 stating, "Enclosed are seven applications for  
23 permit to operate."

24 Q. Okay. So, if I refer back to -- we can leave  
25 this up -- but 19.07 we just looked at, that said

1 "Please submit additional Air 100s." This is a  
2 letter now less than a month later with seven of  
3 those, is that right?

4 A. Correct.

5 Q. Okay. Now, there's a -- there's a little part  
6 at the bottom here. Can you read that out?

7 A. It states, "We protest the use of the data  
8 contained in these and subsequent application forms  
9 (identified as 76-16-3) for any theoretical  
10 numerical manipulation to determine a similarly  
11 theoretical impact."

12 Q. Does that have any meaning to you or to your  
13 inspectors in the department?

14 A. It has no meaning to me.

15 Q. Okay. Do you have any idea what Mr. Kamholz  
16 was trying to convey here?

17 A. I'm going to guess he --

18 MR. PERSONIUS: Your Honor, I object to a  
19 guess.

20 MR. LINSIN: I object.

21 THE COURT: All right. Sustained.

22 MR. PERSONIUS: He already said he doesn't  
23 know.

24 THE COURT: Yes, sustained.

25 MR. MANGO: All right. We'll move on.

1 Let's -- I'd like to show you Government Exhibit  
2 19.80 for identification purposes.

3 And absent an objection, move that into  
4 evidence. I'm sorry. That's what we're looking  
5 at, 19.09. Absent an objection, move 19.09 into  
6 evidence.

7 MR. LINSIN: No objection, your Honor.

8 MR. PERSONIUS: No objection, your Honor.

9 THE COURT: Okay. 19.09 received. No  
10 objection.

11 (Government's Exhibit 19.09 was received  
12 into evidence.)

13 THE COURT: Just so you know, ladies and  
14 gentlemen, to the extent that we've been able to do  
15 this, the exhibits have been exchanged and turned  
16 over to the attorneys and they, in all likelihood,  
17 reviewed everything, but, it does require that we  
18 specifically admit the documents on offer. But it  
19 takes the lawyers a little time to just kind of  
20 scan the documents to make sure that it's the  
21 document that they understand it to be.

22 So, with that, Mr. Mango, continue, please.

23 MR. MANGO: Thank you, your Honor. I'd  
24 ask that this be published to the jury.

25



1 BY MR. MANGO:

2 Q. What is letter that we're looking at,  
3 Mr. Carlacci?

4 A. This appears to be another cover letter from  
5 Mark Kamholz to Gary Foersch with DEC stating that  
6 there's six more applications for certificate to  
7 operate as requested.

8 Q. Okay. I'd like to move on to -- and show you  
9 Government Exhibit 102 for identification purposes.

10 Okay. Do you see Exhibit 102 on your screen?

11 A. Yes, I do.

12 Q. Just in general terms --

13 MR. MANGO: Well, I guess, your Honor, I'd  
14 move this into evidence subject to an objection.  
15 If there is an objection, I can cover some  
16 foundational grounds, if need be.

17 MR. LINSIN: Could we -- is there an  
18 additional page to this document?

19 MR. MANGO: Yes. There's four additional  
20 pages.

21 MR. LINSIN: Could we see the final page,  
22 please?

23 MR. MANGO: Yes.

24 MR. LINSIN: And the first page again,  
25 please. Tonawanda has no objection, your Honor.

1 MR. PERSONIUS: Your Honor, the only  
2 concern we have is there's -- there's a handwriting  
3 on it and we don't -- we can't identify the  
4 handwriting. But subject to that, we have no  
5 objection to the exhibit. Maybe this witness can  
6 explain that handwriting.

7 THE COURT: Okay. I'll receive 102,  
8 noting the comment relative to the handwriting. It  
9 will be received without objection otherwise.

10 (Government's Exhibit 102 was received  
11 into evidence.)

12 THE COURT: Let me just ask this one  
13 question before you proceed.

14 The request for -- is it permission to operate?  
15 Is that a Clean Air Act requirement or RCRA  
16 requirement, or what that is that you just  
17 testified about?

18 THE WITNESS: It's under the Clean Air  
19 Act -- excuse me -- under the Clean Air Act it  
20 requires permits for each emission point or source  
21 of air pollution. It's a Clean Air Act  
22 requirement. It's a state requirement. Part of  
23 that SIP plan that's approved by the federal  
24 government.

25 THE COURT: Okay. So that's what we're

1 talking about, the Title V application process?

2 THE WITNESS: This is prior to Title V  
3 when it was the state's form of air application and  
4 permit.

5 THE COURT: Okay. So that relates  
6 specifically to Counts 1 through 15, I guess,  
7 right?

8 MR. MANGO: Yes, your Honor. It's the  
9 predecessor to Title V, and it does.

10 THE COURT: Okay. Okay. So that's where  
11 we're at, ladies and gentlemen, in that kind of  
12 scope of the indictment. Okay. And as you know,  
13 you heard testimony yesterday about what was the  
14 precursor to, you know, the Clean Air Act and its  
15 requirements under Title V. So that's -- that was  
16 what that testimony was about.

17 Now we're going where, Mr. Mango?

18 MR. MANGO: We're on 102, your Honor. I  
19 believe the witness is going to discuss this  
20 letter, which has been I think admitted into  
21 evidence.

22 And I ask that it be published for the jury.

23 THE COURT: Okay. And today is, what,  
24 February 28th, right? So we're saying goodbye  
25 today to February, and we'll do that in March with

1 Exhibit 102. Received. No objection.

2 MR. MANGO: If we can -- maybe we can  
3 focus on that part just to make it just a tad bit  
4 bigger, please.

5 BY MR. MANGO:

6 Q. Okay. Mr. Carlacci, let's just get the basics  
7 out of this -- for this letter. Who is this letter  
8 from, who is it to, and when is it dated?

9 A. This is a letter from Tonawanda Coke, dated  
10 October 29th, 1993, to the deputy administrator of  
11 the United States Environmental Protection Agency.

12 Q. Okay. And you've already seen this letter, is  
13 that correct? So without seeing the last page, do  
14 you know who this letter came from?

15 MR. PERSONIUS: Your Honor, pardon me.  
16 This -- there's been a number of compound  
17 questions. If we could just have one question at a  
18 time, please.

19 THE COURT: Yeah.

20 MR. MANGO: Yes, your Honor, I'll --

21 THE COURT: It does help. I mean, some of  
22 it will move things along, even if it's compound.  
23 I think that's a point well taken. So just  
24 discipline yourself in that regard. Thanks.

25 MR. MANGO: Yes, your Honor.

1 BY MR. MANGO:

2 Q. Who is this letter from?

3 A. I missed who signed it.

4 Q. If we could go to the last page, please.

5 A. It's from Mark Kamholz of Tonawanda Coke.

6 Q. Okay. If we can go back to the first page,  
7 please.

8 Okay. While we're doing that, why don't you  
9 tell the jury what the essence of this letter is?  
10 Is there a -- let me start again.

11 Is there a request being made in this letter?

12 A. Yes.

13 Q. Okay. Why don't you tell the jury what the  
14 request is in this letter.

15 A. The request is for an alternative method of  
16 controlling emissions from the coke oven battery as  
17 required by the NESHAP regulation.

18 Q. Okay. Now, you talked about that yesterday.  
19 Let's again talk -- what is the NESHAP regulation?  
20 There is a reference here to the hazardous --  
21 National Emissions Standard for Hazardous Air  
22 Pollutants for coke ovens -- for coke ovens  
23 promulgated by the U.S. EPA in 1993.

24 Can you tell the -- the jury what that is?

25 A. This is a NESHAP for the control of hazardous

1 air pollutants such as benzene from coke oven  
2 operations, and this request -- in this section of  
3 that reg, it requires a flare for emergency  
4 purposes when the exhauster goes down.

5 Q. Okay. So it requires a flare on what?

6 A. To destroy the coke oven gas emissions  
7 generated by the battery.

8 Q. Okay. So if -- let me ask you this question:  
9 If there's coke oven gas to be vented out of the  
10 battery, this regulation says it has to be flared?

11 A. Correct.

12 Q. All right. Now, did this NESHAP for coke ovens  
13 promulgated in 1993 come as a result of this 1990  
14 amendment to the Clean Air Act?

15 A. If this is the 1993 NESHAP they're referring  
16 to, yes.

17 Q. Okay. So this was a product of that which you  
18 discussed yesterday, the 1990 Clean Air Act?

19 A. Correct.

20 Q. All right. And it says, "We -- we are required  
21 to install" -- I'm reading from here -- "a bypass  
22 bleeder stack flare system on the battery by  
23 March 31st of '94," is that right?

24 A. Correct.

25 Q. Okay. So, again, what is the letter

1 requesting?

2 A. It's requesting an alternative method of  
3 controlling those emissions.

4 Q. Okay. And are you familiar with the -- the  
5 alternative method that is being proposed by  
6 Defendant Kamholz in this letter?

7 A. In -- this letter describes a system of  
8 standpipes that would maintain the coke oven gas in  
9 the battery until they had an opportunity to ignite  
10 that gas.

11 Q. Okay. Is -- so can you read that, starting  
12 with "This procedure"?

13 A. It states in the letter, "This procedure would  
14 be fully implemented within approximately three to  
15 five minutes, and as the battery would have no  
16 other relief events, would ensure that no unburned  
17 gas is vented to the atmosphere. All applicable  
18 opacity standards would be met."

19 Q. Okay. I want you to keep that -- that  
20 statement in mind. Let's go to the second page,  
21 please.

22 Now, terms of this request for approval, if we  
23 can focus in on that section. What different  
24 grounds are being given by Defendant Kamholz to  
25 justify why this should be allowed?

1           Actually, zoom in, please.

2           A.   The justification for an alternative system is  
3           low rate of generating coke oven gas, over  
4           abundance of exhauster capacity, contact plant  
5           layout/plant design, minimum likelihood of venting  
6           incidences.

7           Q.   Okay.  If we can come back out, I'd like to  
8           show you a different part on that page.

9           If you can read this part.  Maybe we can zoom  
10          it in.

11          A.   "Because we generate such small volumes of coke  
12          oven gas, gas availability for steam production is  
13          a chronic problem.  Inevitably, we are forced to  
14          supplement coke oven gas with natural gas,  
15          particularly in wintertime.  Consequently, venting  
16          is very expensive for use, and we avoid it at all  
17          costs."

18          Q.   Okay.  What is -- is that statement important  
19          to you in your role at DEC?

20               MR. LINSIN:  Your Honor, excuse me.  Until  
21          we have a foundation that this witness had anything  
22          to do with the response to this letter, I'm not  
23          quite sure how we can evaluate what is important to  
24          him or why that is relevant here.

25               THE COURT:  Yeah.  You've got to look at



1       it. I'll open that up to you, Mr. Mango. I think  
2       we need more to get testimony from this witness.  
3       And keep in mind that we're talking about 1993, I  
4       think as well.

5                   MR. MANGO: Yes, your Honor.

6 BY MR. MANGO:

7       Q. Did you have any role in writing this or  
8       receiving this letter from the EPA?

9       A. No, I did not.

10      Q. Or from Defendant Kamholz?

11      A. No, I did not.

12      Q. Okay. So let's not go into the particulars yet  
13      on that.

14                If we can back out. If we can go to the next  
15      page, please. If we can go to the last page,  
16      please.

17                Is there someone in New York State Department  
18      of Environmental Conservation listed there?

19      A. Yes, sir. Henry Sandonato.

20      Q. Okay. So the DEC received a copy of this  
21      letter?

22      A. Correct.

23      Q. All right. If we can move to -- I'll show you  
24      Government Exhibit 107.

25                   THE COURT: Well, let me just ask you this

1 before we leave. Can you identify any of the  
2 writing, the handwriting that's on this letter?

3 THE WITNESS: Some of it.

4 THE COURT: Whose is it, do you know?

5 THE WITNESS: On the first page?

6 THE COURT: Let's go to the first page,  
7 please, Ms. DiFillipo.

8 THE WITNESS: The "let's discuss SG" is  
9 Stan Gubner, the regional air pollution control  
10 engineer at that time. On the top right corner,  
11 GF, is initials for Gary Foersch. I can't make out  
12 the first name on the top. And the other two names  
13 here, Roy or Amanda I'm not familiar with.

14 THE COURT: Okay. We'll move on then.

15 Thank you.

16 BY MR. MANGO:

17 Q. Okay. Now do you know if that request for an  
18 alternative flare system by Defendant Kamholz was  
19 allowed or not allowed?

20 A. It was denied.

21 Q. Okay. If we can move to Government  
22 Exhibit 107, I'd like to show you that for  
23 identification purposes.

24 MR. MANGO: And absent an objection, your  
25 Honor, move this into evidence.

1 MR. LINSIN: No objection, your Honor.

2 MR. PERSONIUS: Your Honor, I just would  
3 like to see the rest of the exhibit, if I could,  
4 please.

5 MR. MANGO: Yes.

6 THE COURT: Sure. Take it through page by  
7 page, please, Ms. DiFillipo.

8 MR. PERSONIUS: No objection, your Honor.  
9 Thank you.

10 THE COURT: Okay. You're welcome. 107  
11 received. No objection.

12 (Government's Exhibit 107 was received  
13 into evidence.)

14 MR. MANGO: Okay. If -- if we can just --  
15 if we can publish this for the jury, please. And  
16 if we can maybe just focus actually on that  
17 portion, make it just a tad larger, please.

18 BY MR. MANGO:

19 Q. Okay. Who's this letter from and who is it to  
20 and when is it dated?

21 A. This is from the director of the United States  
22 EPA to Mark Kamholz, Tonawanda Coke Corporation.

23 Q. And what is the purpose of this letter?

24 A. This letter is a response to the request for an  
25 alternative control system.

1 Q. Okay. And -- and this -- you mentioned before  
2 that that request was denied.

3 A. Correct.

4 Q. Does this letter deny that request?

5 A. This is the letter that denies the request.

6 Q. Okay. If you could just read this paragraph,  
7 please.

8 A. "After extensive review of your request by my  
9 staff and the regions, we have concluded that your  
10 proposal does not represent an adequate alternative  
11 that would achieve at least 98 percent control or  
12 destruction efficiency."

13 Q. All right. If we can move to the second page  
14 at the bottom. If you can, read that regarding  
15 minimal likelihood of venting incidents.

16 A. "Minimum likelihood of venting incidents. Some  
17 of the factors you cite indicate that you may have  
18 a lower potential for venting raw coke oven gas  
19 than some other batteries, and your records show  
20 that, historically, it has not."

21 Q. If we can go -- continue there.

22 A. "It has not been a problem. However, other  
23 plants have already argued this point during the  
24 negotiations, and it was not accepted as a reason  
25 for not installing the flare system."

1 Q. And if you can keep reading, then.

2 A. "In conclusion, we feel a very rapid response  
3 is needed when there is a venting episode, as a  
4 large amount of coke oven gas can be generated in a  
5 short period of time."

6 Q. Next sentence, please.

7 A. "Also we have discovered that some companies,  
8 after closer examination, found they were venting  
9 more often than they thought. Some of these  
10 venting episodes were brief, but occurred several  
11 times per day at one plant. A manually operated  
12 system would not be as reliable as a flare system  
13 for these brief venting episodes. An automatic  
14 system is much faster than using battery workers to  
15 vent the battery. And"--

16 Q. That's -- that's sufficient. Thank you.

17 THE COURT: All right. Just for  
18 clarification purposes, maybe more mine than  
19 anybody's, you keep on referring to a battery.  
20 Tell us what a battery is. I think that consists  
21 of a number of ovens, right?

22 THE WITNESS: Correct. It's a series of  
23 ovens. In this case, approximately 60 ovens with  
24 flues in between that comprise a battery where  
25 you're cooking this coal to make coke and

1 extracting the coke oven gas.

2 THE COURT: Okay. How many ovens?

3 THE WITNESS: Approximately 60.

4 THE COURT: And is that the battery at  
5 Tonawanda Coke, or is that --

6 THE WITNESS: It's the battery at  
7 Tonawanda Coke I'm describing.

8 THE COURT: All right. And this is back  
9 in the mid-1990s?

10 THE WITNESS: Correct.

11 THE COURT: Okay. And we're working up to  
12 the indictment period, which is 2005 through 2009  
13 essentially, right?

14 MR. MANGO: Yes.

15 THE COURT: Okay. So that's where we're  
16 at. This is moving in that direction, ladies and  
17 gentlemen. Yes?

18 MR. LINSIN: Your Honor, while we are on  
19 this page, could we just clarify with the witness  
20 who actually authored this letter? I believe his  
21 testimony was the director of EPA. And could we  
22 just clarify that now that we're on the signature  
23 page?

24 THE COURT: Absolutely.

25 THE WITNESS: It's John Seitz, Director,

1 Office of Air Quality Planning and Standards with  
2 the United States EPA.

3 MR. LINSIN: Thank you, your Honor.

4 THE COURT: You're welcome.

5 BY MR. MANGO:

6 Q. Okay. There was a couple of questions from --  
7 from Chief Judge Skretny. I'd like to just follow  
8 up on that. You mentioned there was the -- the  
9 battery is a series of coke ovens?

10 A. Series of ovens.

11 Q. Do you know approximately when that -- that  
12 battery began operation?

13 A. The battery I believe was built in the '20s and  
14 '30s. Application's listed as 1962.

15 Q. Okay. And then taking now this -- from this  
16 letter, even up to the -- to the 2005 to 2009  
17 period, was the battery operating in the same  
18 manner as it was back in 1962?

19 A. Yes.

20 Q. Okay. There were no additional ovens added on  
21 to it, were there?

22 A. No.

23 Q. Okay. All right. Thank you. If we can go to  
24 Exhibit 19.10, I'd like to show you for  
25 identification.

1           MR. MANGO: And absent an objection, your  
2 Honor, move this into evidence as a letter coming  
3 from Defendant Kamholz.

4           MR. LINSIN: Your Honor, we do not object  
5 on foundation grounds in term of business records.  
6 I'm struggling with the relevancy of many of these  
7 documents, however.

8           THE COURT: Okay. You know, the offer's  
9 going to be made subject to connecting up. I mean,  
10 if you want to note an objection, that's okay. I  
11 know you've been busy getting up and going down.  
12 If you want to object or discuss just remaining  
13 seated, that's okay. Otherwise -- but if you want  
14 the exercise, that's even better. So you chose  
15 either way. Okay?

16           MR. LINSIN: Old habits are hard to break.  
17 Thank you.

18           THE COURT: No, I know. I mean, it's  
19 preferable, and the way we traditionally do it,  
20 ladies and gentlemen, we ask the attorneys to -- to  
21 stand and articulate the objection. Makes it  
22 easier for me to handle, you get to understand, you  
23 know, what we're talking about a little better.  
24 But, you know, there's so many documents in this  
25 case, I'll leave it up to you, how you want to do



1       it. If you need a workout, standing up is fine.

2               MR. LINSIN: Okay.

3               THE COURT: If there comes a point where  
4       you really want to establish the -- the objection  
5       as to relevancy, let me know. I mean, I know  
6       there's almost a general concern about relevancy  
7       from your standpoint. But I can't entertain just a  
8       general objection on relevancy grounds. So when  
9       you want it to be specific, hit me with it, and  
10      then we'll put Mr. Mango to the task of, you know,  
11      responding. But, you know, so far subjecting this  
12      to connecting up would probably mean I'd overrule  
13      the objections, although legitimately there's a  
14      concern and I'll entertain a motion to strike if  
15      necessary at the appropriate time. Okay?

16              MR. LINSIN: Thank you, your Honor.

17              THE COURT: I don't know, if you have a  
18      better way of handling it, let me know, and I'll  
19      work with you on that.

20              MR. LINSIN: All right.

21              THE COURT: Mr. Personius, anything  
22      that -- I'm sorry, Mr. Kamholz -- that we should  
23      know before we move forward?

24              MR. PERSONIUS: No, your Honor.

25              THE COURT: All right. And so I'll admit

1 19.10 subject -- without objection at this point.  
2 And then if there are any relevancy issues  
3 afterwards, we'll talk about it.

4 (Government's Exhibit 19.10 was received  
5 into evidence.)

6 MR. MANGO: Excellent. I'd ask that this  
7 be offered then for the jury.

8 BY MR. MANGO:

9 Q. And Mr. Carlacci, can you please tell the jury  
10 who this letter is from, who it is to, and when it  
11 is dated?

12 A. This is a letter from Tonawanda Coke signed by  
13 Mark Kamholz, dated October 21st, 1994, to the  
14 department, Gary Foersch.

15 Q. If we can focus in on this section here. If  
16 you could read starting there, starting at the  
17 "The."

18 A. "The only emission source adversely affected  
19 during this incident."

20 Q. And then "The by-product."

21 A. "The by-product and boiler areas operated  
22 normally, and, thus, there were no venting."

23 Q. Okay. So what is -- what is the purpose of  
24 this letter? What is the purpose of this letter?

25 A. This letter describes a malfunction at the

1 plant, identifies emissions out of the waste heat  
2 stack.

3 Q. Okay. And discusses how something was manually  
4 opened right there?

5 A. Right. It addresses there how they addressed  
6 that malfunction to prevent additional emissions.

7 Q. All right. Does this have anything to do with  
8 the -- the automatic flare system that we  
9 previously discussed?

10 A. No, it does not.

11 Q. All right. But this -- this part that talks  
12 about the by-product and boiler areas operated  
13 normally, and thus there was no venting, is that an  
14 important statement to the Department of  
15 Environmental Conservation?

16 A. Yes, it is, as to my knowledge as to what  
17 Tonawanda Coke was -- was familiar with on how to  
18 handle emission sources and emissions.

19 Q. Okay. Is that something -- whether there would  
20 be venting from the by-products department, is that  
21 something the DEC would want to know about?

22 MR. PERSONIUS: Your Honor, he already  
23 asked if it was important, and the witness said it  
24 was.

25 THE COURT: Yeah. I think that that will

1 suffice. Let's move on.

2 Let me ask you this: Give me your theory of  
3 relevancy here. I want to follow up on --

4 MR. MANGO: Yes, your Honor. This  
5 directly shows that Defendant Kamholz is making a  
6 comment to the DEC by saying that there was no  
7 venting in the by-products unit. So, in essence,  
8 as the government is arguing, the Defendant Kamholz  
9 knew that venting from by-products -- anything from  
10 by-products is a very serious and important matter  
11 and needs to be raised with the department. He  
12 specifically put a sentence in here which says the  
13 by-products -- the by-product area operated  
14 normally and thus there was no venting. That  
15 relates directly to this pressure release valve,  
16 which vents in the by-products units, and I think  
17 is relevant, your Honor.

18 THE COURT: All right. Going to the  
19 indictment period?

20 MR. MANGO: Yes.

21 THE COURT: So this is background  
22 knowledge information with regard to the process  
23 that relates to the -- to the permitting  
24 requirements?

25 MR. MANGO: Yes, your Honor.

1           THE COURT: Okay. All right. What the  
2 attorney says, though, ladies and gentlemen, is not  
3 evidence. Remember that. It's going to be for  
4 admissibility purposes only. And, you know, I kind  
5 of need that information to make a ruling with  
6 respect to whether it's competent evidence for you  
7 to consider. But once the document's in, it's up  
8 to the attorneys at the end of the case, if you  
9 will, to argue from those documents whether it  
10 does, in fact, support the essential elements of  
11 each of the counts or the particular count for  
12 which it is being offered. Okay?

13           So you have to kind of keep in mind that this  
14 case is about individual counts consisting of  
15 individual elements, and these particular exhibits  
16 have to relate to a particular count, at least.  
17 And if pressed, to a particular element before  
18 they're properly competent evidence. And this is  
19 pretty far removed stuff, so we've got to be  
20 cautious on the continued presentation of this  
21 evidence. And if there's anything else --

22           MR. LINSIN: Nothing further, your Honor.

23           THE COURT: All right, Mr. Linsin. So  
24 I'll allow it. I'll allow it. But, you know, I'm  
25 going to challenge you from time to time on the

1 relevancy.

2 MR. MANGO: Absolutely, your Honor. Thank  
3 you.

4 All right. If we can move on to show you for  
5 identification purposes Exhibit 19.11.1.

6 And absent an objection, your Honor, I would  
7 ask to enter this into evidence, not only as a  
8 letter coming from Defendant Kamholz regarding  
9 quench station number 2, but as a business report  
10 of the DEC as it has notations by DEC on here.

11 MR. LINSIN: Your Honor, as to the  
12 document -- excuse me.

13 THE COURT: No, either way. It doesn't  
14 matter. You know, just whatever you -- you know, I  
15 thought you were hesitating: Should I get up,  
16 should I sit down, should I get up. And I'm  
17 wondering if I should have said what I said, but  
18 okay.

19 MR. LINSIN: I will -- as to a document --  
20 business record from Tonawanda Coke, we have  
21 absolutely no objection.

22 As to the identification of whose handwriting  
23 this is and who made it, counsel's statement about  
24 whose handwriting can't provide a basis for a  
25 business record foundation for DEC. If this

1 witness can identify something, so be it, but not  
2 counsel.

3 THE COURT: All right. It very well may  
4 not be a business record for DEC, but it doesn't  
5 have to be to be properly relevant --

6 MR. LINSIN: Exactly.

7 THE COURT: -- and admissible. All right.  
8 But the point's made. So you've heard the  
9 objection -- I don't know if it's an objection --

10 MR. LINSIN: It is.

11 THE COURT: -- but it's a clarification.

12 MR. LINSIN: And request, I guess, your  
13 Honor, if this -- if this witness can identify  
14 whose handwriting is interlineated here in the  
15 middle of the document.

16 THE COURT: Okay. Fair enough. And I  
17 think we have to do that.

18 Go ahead, Mr. Mango.

19 MR. MANGO: Yes, your Honor.

20 Lauren, if you could, please, zoom in on that  
21 portion for the witness to review.

22 BY MR. MANGO:

23 Q. Mr. Carlacci, do you see that -- that  
24 handwritten portion there?

25 A. Yes. It's handwriting that's initialed by Gary

1 Foersch stating that he discussed this document  
2 with Henry Sandonato.

3 Q. Okay. So without -- and, again, without going  
4 into the details, so Gary Foersch, you already  
5 mentioned, is a -- was a technician working at DEC.

6 A. Correct.

7 Q. And Henry Sandonato was an engineer who was  
8 Gary's supervisor?

9 A. Correct.

10 MR. MANGO: All right. Your Honor, we  
11 would move this document into evidence at this  
12 point.

13 THE COURT: Okay.

14 MR. LINSIN: No objection.

15 MR. PERSONIUS: No objection.

16 THE COURT: Okay. 19.11.1?

17 MR. MANGO: Yes, 19.11.1.

18 THE COURT: Okay. Received. No  
19 objection.

20 (Government's Exhibit 19.11.1 was received  
21 into evidence.)

22 MR. MANGO: I'd ask that it be published  
23 for the jury.

24 BY MR. MANGO:

25 Q. And if you could tell the jury, Mr. Carlacci,



1 the date, who it's from, and who it's to.

2 A. Date on the letter is December 29th, 1996, from  
3 Tonawanda Coke, signed by Mark Kamholz to the  
4 Department of Gary Foersch.

5 Q. Okay. If we can zoom in on just this portion,  
6 and then we'll -- I'd like to go through this whole  
7 letter, actually, with you, but let's focus on this  
8 top half.

9 So what is Defendant Kamholz notifying the  
10 department of in this letter?

11 A. It's in regards to the deterioration of number  
12 2 quench tower.

13 Q. And is Defendant Kamholz in this letter telling  
14 the department that he plans to take any  
15 activities?

16 A. Yes. He plans to remove a portion of the  
17 tower.

18 Q. Okay. And in there -- I ask you to start  
19 reading at that sentence.

20 A. "As such, it offers certain qualities that  
21 reduce the entrainment of any particulates. The  
22 quench station's height is a fraction of typical  
23 quench towers (100 to 200 feet) and has no taper or  
24 chimney-like structure to act as a duct; thus,  
25 inducing velocity to propel any particulates into

1 the atmosphere."

2 Q. Okay. Let's read the bottom half of this  
3 letter.

4 THE COURT: Okay. Before you move on, if  
5 you know, what does "entrainment" mean?

6 THE WITNESS: Entrainment is to  
7 reintroduce the particulates into the ambient air.

8 THE COURT: When you say "ambient air,"  
9 what does that mean?

10 THE WITNESS: The air we breathe.

11 THE COURT: Okay. Thank you.

12 BY MR. MANGO:

13 Q. Let's start there. Okay. Just, really, if you  
14 can read this with the handwriting, please.

15 A. "We anticipate operating number 2 quench  
16 station in its modified form and request your  
17 concurrence to this modification."

18 And this handwriting states "Discussed with  
19 HS," who is Henry Sandonato, with a date  
20 January 6th, 1997. Says "Okay with the condition  
21 if unforeseen problems occur. Stack height have to  
22 be -- might have to be raised." Initialed GWF.

23 MR. MANGO: Okay. Now, if we can go --  
24 I'd like to show you Exhibit 19.12 for  
25 identification purposes.

1           And absent an objection, your Honor, move this  
2           in as a DEC business record.

3           MR. LINSIN: No objection, your Honor.

4           MR. PERSONIUS: No objection, your Honor.

5           THE COURT: Okay. Received. No  
6           objection.

7           (Government's Exhibit 19.12 was received  
8           into evidence.)

9           THE COURT: And that's 19.12.

10          MR. MANGO: Yes, your Honor. And I'd ask  
11          that it be published for the jury.

12         BY MR. MANGO:

13          Q. And Mr. Carlacci, if you can, please, tell the  
14          jury the date, who it's from, and who it's to.

15          A. It's a letter dated January 6th, 1990, signed  
16          by Gary Foersch with the New York State DEC, to  
17          Tonawanda Coke, Mark Kamholz.

18          Q. Okay. And if you can actually start reading  
19          here, and read that -- those two paragraphs,  
20          please.

21          A. "The department has no problem at this time  
22          with the removal of the upper portion of the quench  
23          tower. However, if unforeseen problems occur, such  
24          as, but not limited to, fallout or odor complaints  
25          resulting from the removal of the tower, we may

1       require that the tower be rebuilt back to the  
2       original height. It should also be noted that Part  
3       214.5(a) requires that all wet quench towers be  
4       equipped with a baffle system."

5       Q. Okay. That Part 214.5 we've discussed already,  
6       correct?

7       A. Correct.

8       Q. And is there any notations made in Part 214.5  
9       regarding whether baffles are required in the  
10      quench towers depends on how high the quench tower  
11      is?

12     A. No.

13     Q. Okay. If you're using a wet quench tower, you  
14     have to have baffles. That's what part 214.5 says?

15     A. Correct.

16     Q. Okay. And, again, a wet quench tower, if you  
17     could tell the jury what that is.

18     A. It's a structure that allows you to deluge  
19     water onto this railcar containing coke allowing  
20     for the steam to -- to rise away from the railcar.

21     Q. Okay. Now, we're going to get to some  
22     questions down the line regarding whether you  
23     believe Tonawanda Coke Corporation was in  
24     compliance or not in compliance with their permit.  
25     We're going to talk about that.

1           Are you aware of conditions in their Title V  
2       permit relating to baffles in the quench tower?

3       A.   I believe 214.5(a) is in the Title V permit.

4       Q.   Okay.

5                   MR. PERSONIUS:   Your Honor, if we could  
6       just have a clarification.   The witness says he  
7       believes.   That may mean he knows, it may mean  
8       something else.   And if --

9                   THE COURT:   Okay.   We can do it now or  
10      when you examine.   But let's do it now.

11                  MR. MANGO:   I -- your Honor, we -- we  
12      can -- we will get there at some point.   I do  
13      anticipate offering the Title V permit through  
14      Mr. Carlacci, and we can go through it at that  
15      point.

16                  THE COURT:   Yeah, because the permit has  
17      to itemize specific conditions that are approved  
18      and are contained.   So we'll let you defer until  
19      then.

20                  And if it doesn't get handled to your  
21      satisfaction, Mr. Personius, on your examination,  
22      you can explore it.

23                  Okay.   Go ahead.

24                  MR. MANGO:   Thank you.   Mr. Carlacci, I'd  
25      like to now show you what's identified as

1 Government Exhibit 19.13. I show you that for  
2 identification purposes.

3 And subject to an objection, I would offer this  
4 into evidence, your Honor.

5 MR. PERSONIUS: Your Honor, we -- we have  
6 a relevancy objection.

7 MR. LINSIN: I would share in that  
8 objection, your Honor.

9 THE COURT: Okay. Without identifying the  
10 portion that you say is relevant, how does this  
11 relate?

12 MR. MANGO: Yes, your Honor. This relates  
13 to Mark Kamholz interacting with the department  
14 regarding permitting under Title V and whether  
15 certain things need to be in the Title V permit or  
16 not -- do not need to be in the Title V permit.

17 THE COURT: So familiarity with the  
18 process? Is that what we're talking about?

19 MR. MANGO: Yes, your Honor.

20 MR. PERSONIUS: Your Honor, there's going  
21 to be evidence. He puts -- he completes the permit  
22 application. This has to do with a whole different  
23 part of the system that has nothing to do, that I  
24 can see, with the issues in this case.

25 MR. MANGO: Your Honor, the Title V permit

1 encompasses all emission sources. This is one of  
2 them. And the government's simply offering it to  
3 show that Mr. Kamholz is aware of the requirements  
4 to interact with the DEC about Title V and notify  
5 whether something needs to be in the Title V permit  
6 or not be in the Title V permit.

7 THE COURT: All right. I'll -- I'll admit  
8 it over objection. I'll determine it to be  
9 relevant if the jury chooses to consider it in  
10 reaching its unanimous verdict in this case.

11 But, ladies and gentlemen, it is being offered  
12 for the limited purpose of establishing Defendant  
13 Kamholz's knowledge of the permitting process with  
14 respect to Title V.

15 THE CLERK: You admitted?

16 THE COURT: Yeah, I am admitting it. It's  
17 19.13 received over relevancy objection.

18 (Government's Exhibit 19.13 was received  
19 into evidence.)

20 MR. MANGO: Okay. If we can -- if you can  
21 tell the jury now in particular what this is, who  
22 it's from, who it's to, the date, and what  
23 particularly is being discussed in the letter.

24 I think that's a little compound. If you want  
25 me to break that up, I can, your Honor.

1                   THE COURT: It was a lot compound,  
2       Mr. Mango, so yeah, break it down.

3       BY MR. MANGO:

4       Q. It's generally background. I thought maybe to  
5       get the background, but let's start: What -- what  
6       is the date of this document?

7       A. This letter is dated June 5th, 1990 from  
8       Tonawanda Coke signed by Mark Kamholz to the  
9       department, Mr. Gary Foersch.

10      Q. Okay. Let's focus on this. And just if you  
11      could tell the jury, please, what Mr. Kamholz is  
12      trying to tell the department in this letter.

13      A. Mr. Kamholz is notifying the department of the  
14      removal or not -- no longer use of boilers number 8  
15      and 9.

16      Q. Okay. That they're coming out of service?

17      A. Correct.

18      Q. And that -- at the bottom here, if you can read  
19      that -- that paragraph.

20      A. "In taking these actions, we will not be  
21      applying for permitting under Title V for boilers  
22      number 8 and number 9, nor emission point number  
23      2."

24      Q. Okay. If we can move on now to Government  
25      Exhibit 19.14, I'd like to show you for



1 identification purposes. This next exhibit ties  
2 in.

3 THE COURT: All right. Let me -- let me  
4 just ask you this: Where -- where do boilers come  
5 in with ovens and batteries, as far as this case is  
6 concerned? Is there any relationship?

7 THE WITNESS: The boilers there are used  
8 to generate steam that are used throughout the  
9 process to heat gases, heat, for example, the  
10 ammonia still.

11 THE COURT: Well, the ovens are what are  
12 being utilized for purposes of the battery  
13 activity, right?

14 THE WITNESS: Correct.

15 THE COURT: So where are the boilers?

16 THE WITNESS: The boilers are in another  
17 building and -- and they supply steam or heat to  
18 other activities at -- at the plant.

19 THE COURT: Yeah, I mean if that's the  
20 case --

21 MR. MANGO: I have a follow-up question,  
22 your Honor.

23 THE COURT: Okay.

24 BY MR. MANGO:

25 Q. At Tonawanda Coke -- I think we -- we heard

1       some reference to this. We may have lost it. How  
2       are -- what runs the boilers at Tonawanda Coke?  
3       What kind of gas?

4       A. Coke oven gas.

5       Q. Okay.

6               THE COURT: That's the COG stuff?

7               MR. MANGO: That's the COG. Coke oven  
8       gas.

9       BY MR. MANGO:

10      Q. So would it be fair to say that if -- if two  
11      boilers are being taken out of service, would that  
12      mean there's more coke oven gas or less coke oven  
13      gas in the -- in the -- in the system?

14      A. There's more than two boilers at the facility.  
15      I'm not familiar with the size of these two without  
16      looking at the application or permit, but it should  
17      be enough boiler to run the facility without these  
18      two.

19              THE COURT: All right. I'm going to  
20      reverse myself. I'm not going to admit 19.13. I  
21      sustained the objection to relevancy.

22              MR. MANGO: Your Honor, if we could --  
23      I -- after we go through Exhibit 19.14, I may ask  
24      to revisit that.

25              THE COURT: Okay. But as of this point,

1       it's simply an identified exhibit. The relevancy  
2       objection is sustained.

3       BY MR. MANGO:

4       Q. All right. I'd like to show you Exhibit 19.14  
5       for identification purposes, and ask that you tell  
6       us the date that this document has on it.

7       A. This document is from the department, dated  
8       August 25th, 1997, to Tonawanda Coke, Mark Kamholz.

9       Q. And it's -- and it's signed by who?

10      A. It's signed by Richard Sweeney, environmental  
11      analyst with the department, division of  
12      environmental permits.

13      Q. Okay. And if we can just focus in on this  
14      section here. What -- what is this letter -- is  
15      this letter in response to something else?

16      A. Yes. It responds to the --

17               MR. PERSONIUS: Your Honor -- your Honor,  
18      I'm concerned where we're going with this. You  
19      have not admitted the earlier letter to which this  
20      is a response. I cannot fathom how this can  
21      possibly be offered at this point if you've  
22      rejected the prior exhibit. This is simply the --  
23      the response to that prior request, and any  
24      testimony we get on it is defeating the fact that  
25      you didn't admit the -- the other letter.

1 THE COURT: This is a little different  
2 because of the language relating to an application  
3 for a new --

4 MR. MANGO: Absolutely, your Honor.

5 THE COURT: -- air emission permit. So  
6 that -- that goes -- but, you know, I'm not sure  
7 that there's enough there necessarily. But what  
8 are you going -- I'll defer ruling on that  
9 objection. Where are you going with this?

10 MR. MANGO: Your Honor, I've -- I've put a  
11 little bracket next to this paragraph here.  
12 This -- this paragraph specifically tells  
13 Mr. Kamholz certain requirements that he has to do  
14 and certain things that needs to be done if  
15 emissions are identified. That's directly relevant  
16 to this case, as we're going to argue that the  
17 pressure release valve is an unpermitted emission  
18 source. In this letter he's specifically being  
19 told that he would have to -- well, I don't know  
20 how much you want me to go into the details.

21 THE COURT: I just -- that's far enough.  
22 But this is specific as to a situation where you  
23 have boilers that are -- are retired. I mean it  
24 has nothing -- does it have anything to do with the  
25 general requirements with respect to a Title V like

1 application?

2 MR. MANGO: Well, your Honor, this -- this  
3 letter -- the next exhibits I'm going to show this  
4 witness are the actual Title V applications which  
5 come some four months after this letter. Four  
6 months after this letter. And there's a -- there's  
7 a line here which starts right there, which says  
8 "Specifically any emission points that you operate,  
9 you have to have a permit for."

10 MR. PERSONIUS: But that's not a fair --  
11 that's taking it out of context. That's the  
12 concern. This is -- this is specific to the prior  
13 letter. This isn't some general advice that's  
14 being given. It's if you put the boilers back  
15 in -- in operation, then you're going to have an  
16 obligation. That's all the letter's saying.

17 MR. MANGO: Yeah, that's what the first  
18 sentence says, your Honor.

19 THE COURT: No, I'm going to agree with  
20 that. I'm going to sustain the objection. You can  
21 come back to it. But, you know, if you're going to  
22 the Title V permit applications, go there. But, I  
23 think -- I think this is right, this is specific to  
24 the dual boiler situation. Unless you -- I mean,  
25 unless there's something else here that I don't

1 see.

2 MR. MANGO: Well, your Honor, even if it  
3 is specific to the dual boilers, I think the point  
4 that he is being told that operation of emission  
5 points without a permit is a violation of the law,  
6 and it's subject to enforcement action. That is --  
7 that is relevant --

8 If I can finish, please.

9 That is -- that is relevant to his state of  
10 mind when he submits this Title V application.  
11 When he -- when he -- in the government's view,  
12 when he fails to submit any type of application to  
13 utilize this pressure release valve.

14 MR. PERSONIUS: Judge, and I apologize for  
15 interrupting. I don't want to get into that. But  
16 this letter is important because -- and I'm reading  
17 from an exhibit not in evidence, but it says,  
18 "Operation of the emission points; i.e., the boiler  
19 emission points." Not operation of an emission  
20 point which would be the general advice he's trying  
21 to get. This is specific to the boiler. It talks  
22 about the, not A or an or any. That's the  
23 distinction, Judge. We're overreading the letter.

24 MR. LINSIN: The regulations -- in  
25 addition, the regulations that relate to particular

1 emission sources or emission points -- and there is  
2 a distinction -- vary throughout a plant like this.  
3 And those things that may relate to a boiler do not  
4 necessarily relate to a vent.

5 THE COURT: Yeah, but we're still talking  
6 emissions, though, right?

7 MR. LINSIN: Well, but the -- but the  
8 requirements, your Honor, are different. And that  
9 is what -- yes, the Title V relates to emissions,  
10 but what is required and how it is required to be  
11 recorded and noted vary depending on the type of  
12 unit that is being discussed. And boilers are  
13 unique.

14 THE COURT: All right. Let me ask you  
15 that, Mr. Carlacci. Does the unit make a  
16 difference with respect to the application of the  
17 requirements?

18 THE WITNESS: Your Honor, 201 states what  
19 requires a permit. And this -- this -- these terms  
20 are right out of 201 or very similar to what's  
21 required in 201.

22 THE COURT: Yeah, but we're talking  
23 different types of units, boilers versus ovens.

24 THE WITNESS: Emission points. Doesn't  
25 matter if it's a boiler or bleeder valve or any

1 other kind of stack. An emission point is a source  
2 of emissions.

3 THE COURT: So they're the same?

4 THE WITNESS: I'm going to say it's the  
5 same. Emission unit is different, but emission  
6 source and emission point are interchangeable at  
7 times.

8 THE COURT: All right. I'm going to leave  
9 it at that. And then if there wants to be  
10 cross-examination on that, I'll permit it. I will  
11 receive the exhibit over objection.

12 MR. PERSONIUS: Your Honor, if you're  
13 going to admit this exhibit, then I request you  
14 admit the prior exhibit. Because without the prior  
15 exhibit, this exhibit I think can be overread. I  
16 think you need to have the prior exhibit too. So  
17 if you're going to admit this, I'd ask that you  
18 admit 19.13 also.

19 THE COURT: All right. I'm going to  
20 receive 14. I don't think there's a risk of  
21 overreading it. I -- without 13 -- .13. So I'm  
22 not going to admit that. If you want to move it as  
23 part of your case, so be it. But at this point, I  
24 will not do it.

25 MR. PERSONIUS: Just to -- to clarify



1       that, Judge, when you say as part of our case,  
2       during the cross-examination of this witness may  
3       I --

4               THE COURT:   Yeah, you can use it then too.  
5       Sure.

6               (Government's Exhibit 19.14 was received  
7       into evidence.)

8               MR. MANGO:   Mr. Carlacci, I'd like to show  
9       you what's marked Government Exhibit 18.09.01 for  
10      identification purposes.

11              And absent an objection, I would offer this  
12      into evidence as part of the Title V application.  
13      It's a multi-page document, your Honor. I would  
14      note that it is actually very -- rather lengthy.

15              THE COURT:   Give us the number of pages.  
16      Do you have Bates stamp numbers on those?

17              MR. MANGO:   Yes, your Honor. Forty pages  
18      in this document. And there is another of other  
19      exhibits that relate to different emission units in  
20      the Title V application, with different tabs on it  
21      that we'll go through. But this -- this is the  
22      first one and it's 40 pages.

23              THE COURT:   All right. Is that 18 or 19?

24              MR. MANGO:   18.09.01.

25              THE COURT:   Okay. So this is the entire

1 application?

2 MR. MANGO: No, your Honor. There's --  
3 there's additional applications for each different  
4 emission unit, which have been labeled 18.09.02,  
5 .03, .04. So all of the 18.09 exhibits are the  
6 Title V application. They're broken out because  
7 that's -- that's how they were sent to the DEC, is  
8 separate documents, so --

9 THE COURT: And how many applications are  
10 there in this exhibit?

11 MR. MANGO: 21, your Honor. And if you  
12 like I can move them all in mass into evidence as  
13 18.09.01 all the way up to .20. I'm sorry, there's  
14 20, your Honor. .20.

15 THE COURT: Mr. Linsin?

16 MR. LINSIN: Could I just see the  
17 additional 21 documents counsel is referring to?  
18 See if we can expedite this.

19 THE COURT: Yes, let's do that.

20 How is our jury doing? Okay.

21 Ms. DiFillipo, you're doing a nice job on the  
22 technical part of this so far. I don't want you to  
23 get too overconfident, but it's been working pretty  
24 well.

25 Ms. Henderson, you'll have to meet a high bar

1 here.

2 MS. HENDERSON: I will try, your Honor.

3 THE COURT: Would you like a break now?  
4 Because we have to take one at sometime relatively  
5 soon or -- okay.

6 All right. I withdraw that offer of a break.  
7 You get none for the next week. All right.

8 MR. LINSIN: May I confer with co-counsel?

9 THE COURT: Sure.

10 You know, if you want to stand up and, you  
11 know, kind of stretch or anything like that, you're  
12 welcome to do that too until we get everything  
13 ready, but don't leave.

14 Chris, could I see you for a minute, please?

15 MR. LINSIN: Your Honor, we have no  
16 objection to any of these exhibits. We -- we  
17 would, through the Court, suggest it may be  
18 simplest to just mark it all as one exhibit and --  
19 and move it in in unison.

20 MR. MANGO: Well, your Honor, they're  
21 already all marked differently, but I would still  
22 move them all separately in unison.

23 THE COURT: Why -- why would you do that,  
24 Mr. Mango?

25 MR. MANGO: Well, your Honor, I guess

1 I'm -- the details are -- the devil is in the  
2 details. They were sent in separately. I -- you  
3 know, they were -- they were paper clipped  
4 separately.

5 THE COURT: All right. So give me --  
6 we'll move them all in without objection.

7 You're on board with that, Mr. Personius?

8 MR. PERSONIUS: Thank you for thinking of  
9 me, Judge.

10 THE COURT: It's an afterthought, so don't  
11 get carried away with it, all right?

12 MR. PERSONIUS: No, it's perfectly fine.  
13 Just the concern is that -- like -- seems like they  
14 should have a clip on them or something. That's  
15 all.

16 THE COURT: All right. Any colored clip?  
17 I mean --

18 MR. PERSONIUS: What does Ms. Labuzzetta  
19 have, your Honor?

20 THE COURT: All right. Okay. All right.  
21 It does take organizing. You know, we're trying to  
22 do this so it becomes more comprehensible to you.  
23 Okay? And so we can move through this. You know,  
24 we make light of it, but it's important stuff, so  
25 we keep a track -- keep on track -- keep track of

1 all of these exhibits in the way that it will be  
2 manageable for you and for the attorneys when they  
3 get to examinations and arguments. And that's why  
4 it takes a little bit of time. So, please, bear  
5 with us just a little bit.

6 Give me the number range that we are --  
7 included in this -- this offer now.

8 MR. MANGO: Yes, your Honor. 18.09.01 --

9 THE COURT: Okay.

10 MR. MANGO: -- all the way through  
11 18.09.20.

12 THE COURT: .20.

13 MR. MANGO: Okay.

14 THE COURT: Through and including .20?

15 MR. MANGO: Yes, your Honor.

16 THE COURT: Okay. And for that entire  
17 range of exhibits, for today, they're received  
18 without objection.

19 And then you can move at your heart's content  
20 and pace, Mr. Mango.

21 MR. MANGO: Thank you, your Honor.

22 (Government's Exhibit 18.09.01 through  
23 18.09.20 were received into evidence.)

24 THE CLERK: Judge, just for record, that's  
25 20 exhibits, correct?

1 MR. MANGO: Correct.

2 THE COURT: Okay. Good. Thank you very  
3 much. That should help. And we'll move on,  
4 please.

5 MR. MANGO: Great. Your Honor, I'd ask to  
6 actually show the paper exhibit of this one to the  
7 witness. It may help him move through these and  
8 point out different pages.

9 THE COURT: Okay. But Ms. DiFillipo can  
10 work the tech part of it so it's published to the  
11 jury?

12 MR. MANGO: Yes.

13 THE COURT: All right. Let's do that.  
14 Okay.

15 MR. MANGO: Great. May I approach, your  
16 Honor.

17 THE COURT: Absolutely.

18 MR. MANGO: Thank you. I'm going to  
19 show -- show you, Mr. Carlacci, what's now in  
20 evidence as 18.09.01 to .20. And if you do make  
21 reference to a page, I'd ask you to just note which  
22 exhibit you're looking at, and then after that dash  
23 there, just note that number.

24 THE COURT: That's your Bates stump  
25 number?

1 MR. MANGO: Yes.

2 THE COURT: All right. And I think you  
3 all know what's Bates stamp is. It's further  
4 identification numbers so that we don't lose track  
5 of the documents within the numbered exhibits. So  
6 if it's, for example, 18.09.01, there's a number of  
7 pages in there and they're all separately stamped.  
8 And so that when we go back to the record, or if  
9 you need a point of reference, that identification  
10 Bates stamp number will be related to the 09.01  
11 exhibit.

12 BY MR. MANGO:

13 Q. Okay. So let's start here, Mr. Carlacci, with  
14 a 18.09.01. If we can focus on that top portion,  
15 please. Okay. And if you could read, is there  
16 something called a Title V certification there?

17 A. Yes. This is the cover sheet to the Title V  
18 application.

19 Q. Okay. And what does that say?

20 A. Says, "I certify under penalty of law that the  
21 document and all attachments were prepared under my  
22 direction or supervision in accordance with a  
23 system designed to assure that qualified personnel  
24 properly gather and evaluate the information  
25 submitted. Based on my inquiry of the person or

1 persons directly responsible for gathering this  
2 information, (required pursuant to 6NYCRR  
3 201-6.3(d) I believe the information is true,  
4 accurate and complete. I am aware that there are  
5 significant penalties for submitting false  
6 information, including the possibility of fines and  
7 imprisonment for knowing violations."

8 Q. And that's signed by?

9 A. Signed by Mark Kamholz.

10 Q. And the date -- can you make the date out  
11 there?

12 A. November 28th, 1997.

13 Q. All right. And there's a description under  
14 "Project -- Project Description" at the bottom.  
15 Can you read that?

16 A. "Tonawanda Coke Corp. is a merchant by-product  
17 coke facility producing metallurgical foundry  
18 coke."

19 Q. Okay. There's a section at the bottom. If we  
20 can please go to the bottom. If we can zoom in on  
21 the owner contact mailing address. What is that?

22 A. This is information on -- on the owner, firm  
23 contact and facility contact. Both list Mark  
24 Kamholz.

25 Q. Okay. So if you could just tell the jury, now



1 just looking at your -- your copy of 18.09.01,  
2 what -- what the rest of this document contains,  
3 please?

4 A. This documents is the Title V application.  
5 Should contain all of the emission sources, all of  
6 the summary of the emissions, and the applicable  
7 requirements.

8 Q. That's -- that's for .01 to .20, correct? I  
9 want to focus just on .21 -- .01.

10 THE COURT: But what is -- because that  
11 doesn't help. I mean, I'm trying to figure out  
12 what you're saying.

13 BY MR. MANGO:

14 Q. All right. Let's look just solely at 18 --  
15 Exhibit 18.09.01.

16 THE COURT: Okay. So what is that  
17 exhibit? That's a Title V application?

18 MR. MANGO: That's a Title V application.

19 BY MR. MANGO:

20 Q. And if you could go to the third page of that  
21 document. Okay. There is a listing of facility  
22 emission summary. And what is listed there?

23 A. This is the facility emission summary  
24 identifying every pollutant emitted into the  
25 atmosphere.

1 Q. From this facility?

2 A. From Tonawanda Coke.

3 Q. Okay. If we could go to the next page, please.

4 THE COURT: Who makes those entries?

5 THE WITNESS: This is done by the  
6 applicant.

7 THE COURT: Okay.

8 BY MR. MANGO:

9 Q. So there's one more contaminant listed there?

10 A. One more contaminant listed as a continuation  
11 sheet listing hydrogen sulfide.

12 Q. Okay. Now, if we can go to the next page,  
13 page 4, there is a specific emission unit listed  
14 there, is that right?

15 A. Page 5?

16 Q. Yes, page 5. I'm sorry.

17 A. Correct. It is emission unit 1 identifying the  
18 steam generation.

19 Q. Okay. So explain to the -- to the jurors,  
20 please, what emission -- what an emission unit is  
21 for Title V purposes, and what this classification  
22 is, U00001.

23 A. An emission unit is just a description of  
24 similar emission sources. It can describe, in this  
25 case, a boiler house that has three or four boilers

1 in it. So it's describing all of steam generation  
2 by boilers that most likely have very similar  
3 conditions.

4 BY MR. MANGO:

5 Q. Okay. If we can back out of that, please,  
6 Lauren.

7 Now, if we can focus on -- so that's the  
8 emission unit. Now, are there emission points  
9 described that relate to that emission unit?

10 A. Correct. The emission point then would be the  
11 actual vent, the stack, describing the stack  
12 height, diameter information in this -- in this --  
13 in this section.

14 Q. Okay. So is it fair to say that this -- this  
15 unit and then point, emission unit and then  
16 emission point is a way to organize and categorize  
17 emissions coming from a facility?

18 A. Correct. It's a way to describe the -- the --  
19 that operation, the process, the emission point,  
20 and the sources of emission.

21 Q. Okay. If you could tell the -- the jury what  
22 the -- the next couple of pages in this document  
23 discuss. We don't need to get into detail, but  
24 just in general terms so they understand what this  
25 document contains.

1 THE COURT: The next couple of pages being  
2 from what? Six through something or another?

3 MR. MANGO: Yes, your Honor, six through  
4 ten.

5 THE COURT: Thank you. Why don't you work  
6 through those. Start with six, seven --

7 THE WITNESS: Six here is the emission  
8 source identifying a Cleaver Brooks boiler with a  
9 design capacity which is a heat -- heat input rate  
10 in BTUs per hour. So it gives you an indication of  
11 the size of the boiler.

12 BY MR. MANGO:

13 Q. Okay. And it gives a date of construction  
14 there?

15 A. Correct.

16 Q. All right. Let's go to the next page.  
17 What's -- what information is contained on this  
18 page?

19 A. That's page 7. This is another emission,  
20 emission unit 1. This emission and the process.  
21 What's key here is the process. This emission unit  
22 is for the boiler operation burning coke oven gas.  
23 So it's describing, you know, the process of  
24 burning coke oven gas in the three emission  
25 sources -- one, two, and three -- three boilers.

1 Q. Okay. So there's a process described, and then  
2 underneath when you get to the emission unit,  
3 there's a description, another description given?

4 A. Right. This is for the process of burning  
5 natural gas in the same three boilers.

6 Q. Okay. All right. If we can go to the next  
7 page, please. What is -- what is captured on this  
8 page? If you could start at the top and work your  
9 way down.

10 A. This is the emission unit compliance  
11 certification identifying the applicable rule,  
12 identifying how they will read smoke to determine  
13 compliance with the opacity standard in that rule.

14 Q. Okay. And so you talked about opacity and  
15 opacity readings. Those were relevant for boiler  
16 operations?

17 A. Correct.

18 Q. Okay. I'd like to now have you move to Exhibit  
19 18.09.02. Now this is -- this is the application  
20 for a different emission unit as part of the  
21 Tonawanda Coke's application, is that right?

22 A. It would have been one application all together  
23 identifying another emission unit.

24 Q. Let's focus on this emission unit that's  
25 contained in 18.09.02. Which emission unit is

1       this?

2       A.   This is emission unit U coke B.   The  
3       description is this unit is a coke oven battery  
4       consisting of 60 coke ovens charging, pushing,  
5       quenching.   Leaks and waste heat stack are  
6       associated with this unit.

7       Q.   Okay.   So if we can then back out of this and  
8       go down.

9               So then the emission points that are  
10       identified --

11       A.   Correct.   It identifies emission points and  
12       there is a continuation sheet listed so there's  
13       more.   And -- and it's a description of charging.  
14       It's the -- you know, go on further to describe the  
15       process of charging and the emissions that are  
16       associated with that.

17               THE COURT:   All right.   Keep in mind,  
18       ladies and gentlemen, this is a November 1997  
19       Title V application.   Okay?

20       BY MR. MANGO:

21       Q.   Okay.   If we can back out of that, please, and  
22       go to the bottom part where it gives some emission  
23       source.

24               Is there a date of construction given there?

25       A.   Correct.   Date of construction, 1962.

1 Q. All right. So that would have been the date  
2 this coke oven battery would have been constructed?

3 A. Could be associated with when this particular  
4 Willputte charging system was used.

5 Q. All right. If we can go to the next page,  
6 please. You said there is a continuation of  
7 emission points?

8 A. Correct. Lists additional emission points  
9 associated with this emission unit.

10 Q. Okay. Now, let's -- let's take a look at --  
11 the first one says, in the upper right, push 2?

12 A. Push 2, correct. Emission point push 2.

13 Q. All right. Do you know what that relates to?

14 A. Pushing.

15 Q. All right. And beneath that is Quen 1. What  
16 is that relation?

17 A. Emission point 2 referring to quench tower 1.

18 Q. All right. And then beneath that is Quen 2.

19 A. Quen 2 referring to quench or station 2 or  
20 tower 2.

21 THE COURT: Okay. You say push 2 related  
22 to pushing. What's pushing?

23 THE WITNESS: Pushing, you know, is the  
24 process of pushing the coke out of the oven. As it  
25 falls into the railcar, it generates opacity and

1       there's a standard in 214 that the opacity be below  
2       a certain level.

3               THE COURT:   Thank you.

4               MR. MANGO:   If we can go to the next page,  
5       please.

6               MR. PERSONIUS: Your Honor, forgive me.  
7       I'm -- I'm trying to use the paper copies and "next  
8       page", I'm not sure what page we're on.

9               THE COURT:   Okay.   It should be Bates  
10       stamped at the bottom 18.09.02-0003.

11              MR. MANGO:   Yes.

12              MR. PERSONIUS: Thank you, Judge.

13   BY MR. MANGO:

14       Q.   Okay.   Now, each emission source that we've  
15       discussed already is given an ID, a further ID.  
16       I'd like to focus on emission ID9 and emission  
17       ID10.   What do those relate to?

18       A.   Emission ID9 and 10 refer to the two quench  
19       towers.

20       Q.   All right.   So quench 1 is given emission  
21       source ID9?

22       A.   Correct.   And quench 2 is emission source 10.

23       Q.   Okay.   If we could go to page 5, please.   Let's  
24       focus on this top part.   What does this part of the  
25       Title V application discuss?



1 A. This -- in the application it's required that  
2 they list the applicable state or federal  
3 regulations.

4 Q. Okay. So --

5 A. So for charging, you can see CFR Part 63  
6 Subpart L applies, as well as New York State Code  
7 Rules and Regulations Part 214 Subpart 3, Section

8 A. And in -- in handwriting it says consent order  
9 81-27.

10 Q. Okay. Do you know what that consent order  
11 relates to?

12 A. It had to do with a variance of -- of Part 214  
13 for pushing controls.

14 Q. Okay. That relates to a letter that you  
15 discussed yesterday that I believe went back to  
16 1979, is that right?

17 A. Yes.

18 Q. All right. So if we can go -- there's --  
19 there's a check mark there for continuation sheet.  
20 Do you see that?

21 A. That's correct.

22 Q. So let's go to page 6, please. All right. If  
23 we can focus on this. Okay. So you see Quen 1 and  
24 Quen 2 there?

25 A. Yes, I do.

1 Q. Okay. For Quen 1 -- it's listed twice -- it  
2 says, "Permit conditions." And for Quen 2 it talks  
3 about letters 12/29/96 and 1/6/97.

4 A. That's correct.

5 Q. All right. So what is being referenced here in  
6 the permit conditions for Quen 1? And does that --  
7 well, let's just talk about that. What is that  
8 referring to?

9 A. It's referring to the Air 100s. The old --  
10 older permits, state permits that had special  
11 conditions at the bottom of them.

12 Q. Okay.

13 A. And it had to do with use of the tower.

14 Q. Okay. I showed you that Air 100 from quench  
15 tower 1 yesterday, correct?

16 A. Correct.

17 Q. And it had that 10 percent condition on it?

18 A. That's the condition, right.

19 Q. All right. Now the quench tower number 2 --  
20 today we actually just went through those letters  
21 from December 29th of 1996 and January 6th of 1997  
22 and there's a reference being made there, is that  
23 right?

24 A. Correct.

25 Q. There's no other discussion, though -- if you

1       could just flip through the rest of the pages,  
2       there's no other discussion in here giving more  
3       details than that in terms of those letters, is  
4       there?

5               MR. PERSONIUS: Your Honor, as the witness  
6       is doing that, it occurs to me that when you look  
7       at the record of this -- these questions and these  
8       answers, it's going to refer to next page. I think  
9       it would be helpful, if it's not too cumbersome for  
10      Mr. Mango, to refer to something about the page  
11      number. Because, frankly, I'm getting lost. If  
12      you're watching the screen, it's fine, because you  
13      can see on the screen what it is. But trying to  
14      follow it in the hard copy is difficult, and I'm  
15      thinking that the cold record is not going to show  
16      the page number. You see what I'm saying?

17             THE COURT: Why are you looking at the  
18      hard copy instead of --

19             MR. PERSONIUS: Because then I can put a  
20      sticker on something I think is important that I  
21      may want to go back to rather than have it there.

22             THE COURT: Okay. All right. Just give  
23      us the range of pages. But I'm having Ms.  
24      DiFillipo go from page to page on the screen so  
25      that the jury gets a general idea of what the

1 document looks like that is being reviewed by  
2 Mr. Carlacci at this time. So give us the range of  
3 document numbers, from what number to what number  
4 are you asking Mr. Carlacci to review. Just do it  
5 by Bates stamp digital.

6 MR. MANGO: Yes, your Honor. In fact  
7 actually, if we can go to page 9, please.  
8 Actually, I'm sorry. We need page 10. I'm working  
9 off a non-Bates stamped copy, your Honor, so -- but  
10 I can follow along here.

11 THE COURT: It's probably too much  
12 information for me to know that. All right.  
13 Let's -- let's take a break. Okay? And we'll take  
14 about 20 minutes with the jury out, and then we'll  
15 go from 11:35 until about 12:45. That will be our  
16 next period and we'll break for lunch. Okay?

17 (Jury excused from the courtroom.)

18 THE COURT: Before you leave, just one --  
19 and Mr. Carlacci, you can step down, if you'd like.

20 I had that earlier conversation with juror  
21 number 11, and that's Mrs. Linda Finn, just so you  
22 know what that involved. She has some medical  
23 condition that's causing her some discomfort. It's  
24 called scleroderma, and it's -- she is under  
25 treatment from a rheumatologist. She is trying to

1 work through it. The problem becomes a little bit  
2 more aggravated because she can't take her  
3 medication and drive, so she's here without  
4 medication. So she's doing her best to try to work  
5 through this to see if she's going to be okay  
6 absent the medication, because when she takes it,  
7 then she really shouldn't drive.

8 And I alerted the court security officer to  
9 watch her because part of the issue becomes you  
10 become lightheaded and you have a risk of -- I  
11 don't know if it's losing consciousness, but at  
12 least, you know, having some difficulties. And so  
13 we're watching all of that at this point in time.  
14 But she wants to continue. She just has this  
15 problem. So that -- that was what that discussion  
16 was. Okay?

17 MR. MANGO: Thank you, your Honor.

18 MR. LINSIN: Thank you, your Honor.

19 (Short recess was taken.)

20 (Jury seated.)

21 THE COURT: Welcome back. Please have a  
22 seat.

23 Okay. We're resumed in the case of United  
24 States versus Tonawanda Coke Corporation and Mark  
25 Kamholz, defendants. The attorneys and parties are

1 back, present. Our jury is here once again. Roll  
2 call waived.

3 Mr. Mango, you may resume questioning of  
4 Mr. Carlacci, who remains under oath, the  
5 Government's first witness.

6 MR. MANGO: Thank you, your Honor.

7 We were on 189.09.02. If we could pull that  
8 up, please.

9 BY MR. MANGO:

10 Q. Mr. Carlacci, I'd like to reference you  
11 specifically to page 10 of this document. Okay.  
12 Is there a reference on -- let's focus in on the  
13 bottom half of page 10 here. Is there a reference  
14 to emission point quench 1?

15 A. Yes. This is identifying the applicable rule.  
16 There's citing of monitoring information relative  
17 to -- to quench 1.

18 Q. All right. And there's a mention here about  
19 using this as a standby unit?

20 A. Correct. In the description it states, "This  
21 unit is maintained as a standby unit."

22 Q. That's consistent with the documents we've gone  
23 through for quench tower 1?

24 A. Correct.

25 Q. All right. If we could go to the next page,

1 page 11. More information about quench tower  
2 number 1. If we could go, then, to page 13. I'm  
3 sorry, page -- we can stay on page 12.

4 There is a notation up at the top. Let's focus  
5 on this -- that portion. This -- this -- this page  
6 refers to quench tower number 2, is that correct?

7 A. Correct.

8 Q. Okay. Is there any reference on this page  
9 regarding that no baffles are installed in these  
10 tower -- in this tower or that there is any mention  
11 of baffles in here?

12 A. There is no reference to baffle, only to two  
13 letters that describe modifications of the quench  
14 station.

15 Q. Okay. I'd like to show you -- have you look at  
16 18.09.06, that exhibit, please. Pull up the first  
17 page. This relates to emission unit U-ACTIF. What  
18 is that?

19 A. This unit regenerates the sodium carbonate  
20 solution in the desulfurizer by removing hydrogen  
21 sulfide.

22 Q. Okay. Is this in the by-products department at  
23 Tonawanda Coke?

24 A. This was in the by-products area.

25 Q. Okay. We've been talking about this bleeder

1 valve. Is the bleeder valve listed as any type of  
2 unit -- I'm sorry, emission point or emission  
3 source in this document?

4 A. No, it's not.

5 Q. All right. If we can move to Exhibit 18.09.08,  
6 which relates to emission unit U-BHBEC. If we can  
7 focus on this -- that part. What does this  
8 emission unit relate to?

9 A. It describes the process of separating tar from  
10 aqueous flushing liquor.

11 Q. Is that located in the by-products unit?

12 A. Yeah, it is.

13 Q. Is there any mention of the bleeder in here?

14 A. No, there's not.

15 Q. Let's go to 18.09.09. Focus in on that part.  
16 What does this relate to?

17 A. This is an emission unit for 30,000 gallon tar  
18 storage tank.

19 Q. Is that in the by-products department?

20 A. Yes, it is.

21 Q. Is there any mention of the bleeder in this?

22 A. No.

23 Q. Let's go to 18.09.10, please. If we can focus  
24 on that part. What does this emission unit relate  
25 to?



1 A. Removes moisture from tar.

2 Q. Is that in the by-products unit?

3 A. Yes.

4 Q. Is there any mention of the bleeder in this  
5 application for this emission unit?

6 A. No.

7 Q. Let's go to 18.09.11. Let's look at that  
8 portion. What does this exhibit relate to?

9 A. Describes a tank for storage of excess aqueous  
10 liquor.

11 Q. Is this in the by-products unit?

12 A. Yes.

13 Q. Does this mention the bleeder?

14 A. No.

15 Q. Let's go to Exhibit 18.09.12. What does this  
16 exhibit relate to?

17 A. This is the exhauster that draws coke oven gas  
18 from the battery.

19 Q. Is there any mention of the bleeder in this  
20 emission unit?

21 A. No.

22 Q. Let's go to 18.09.13. What does this relate  
23 to?

24 A. This is a tank for storing unrefined or crude  
25 light oil.

1 Q. We talked about the light oil already, right?

2 A. Correct.

3 Q. This relates to that process. Is that in the  
4 by-products unit?

5 A. In that general area.

6 Q. Does this have the bleeder in it?

7 A. No, it does not.

8 Q. Let's go to 18.09.14. What does this emission  
9 unit relate to?

10 A. Describes a storage tank for storage of virgin  
11 wash oil.

12 Q. Is this in the by-products unit of Tonawanda  
13 Coke?

14 A. It's in that area.

15 Q. Is the bleeder listed in here?

16 A. No.

17 MR. PERSONIUS: Your Honor, forgive me.

18 The end of Mr. Carlacci's testimony yesterday he  
19 was asked about the PRV, pressure relief valve, and  
20 about something called a bleeder. Mr. Mango is  
21 consistently referring to references to the  
22 bleeder. I understood Mr. Carlacci to say  
23 yesterday that he -- that there was a difference  
24 between a pressure relief valve and a bleeder, and  
25 I think what we're talking about here is a pressure

1 relief valve. Maybe I'm mistaken, but --

2 THE COURT: Well, let's find out.

3 Clarification questions, please.

4 MR. MANGO: Yes, your Honor.

5 BY MR. MANGO:

6 Q. I've been referring to what you have become  
7 familiar with as a bleeder at the Tonawanda Coke  
8 facility.

9 A. Correct. I've -- I've seen description of it  
10 described as a bleeder valve.

11 THE COURT: Okay. Give us a time frame  
12 for your questions.

13 BY MR. MANGO:

14 Q. Yes. When -- at some point did you see this  
15 emission source -- emission point known as the  
16 bleeder physically at Tonawanda Coke?

17 A. Yes, I have.

18 Q. When did you see it?

19 A. In follow-up inspections around 2011.

20 Q. Okay. Have you -- that's what you know as the  
21 bleeder?

22 MR. PERSONIUS: Your Honor, I object to  
23 the leading. That's the whole point of this, is  
24 trying to see what the distinction is.

25 THE COURT: Well, the last question I

1 think maybe, but I'm going to allow, so we get  
2 through this for an identification purpose, some  
3 leading questions under 611(a), so we get this  
4 thing wrapped up. Okay?

5 MR. MANGO: Yes, your Honor.

6 MR. PERSONIUS: And I think yesterday I  
7 believe he talked about the interchangeability of  
8 the pressure release valve with the bleeder, that  
9 they were one in the same. So --

10 THE COURT: Well, I want to find that out.  
11 I mean, there is a distinction, right, between the  
12 PRV and the bleeder valve?

13 THE WITNESS: They're both a pressure  
14 relief valve, right. You know, you can use a  
15 pressure relief valve in the -- it allows pressure  
16 to build up in a system designed typically not to  
17 release the gas that's contained in there. And  
18 when you start saying "bleeder valve," you still  
19 have pressure relief valve, but you designed it  
20 such that it bleeds off gas.

21 MR. PERSONIUS: All right.

22 THE WITNESS: So that you use it as a  
23 process. It's an emission point.

24 THE COURT: Mr. Personius, what's --  
25 what's your difficulty here?

1 MR. PERSONIUS: Because I think that there  
2 is a difference between a pressure relief valve and  
3 a bleeder based on what he just said. And --

4 THE COURT: Well, they're both release  
5 valves.

6 MR. PERSONIUS: Right. But the one that  
7 we're talking about here, I think is -- the proper  
8 term for it is "pressure relief valve," I think, as  
9 opposed to a bleeder valve. Maybe I am mistaken.  
10 That's what I'm trying to understand.

11 THE COURT: All right. For all practical  
12 purposes, they're both release valves. You want to  
13 know which one we're talking about specifically.

14 MR. PERSONIUS: And if the witness is  
15 saying they're the same, Judge, then -- then I  
16 don't -- that's what I don't understand. If the  
17 witness is saying a bleeder valve and a pressure  
18 relief valve are the same, then I don't object to  
19 using the word "bleeder." But if there's a  
20 difference, I think we ought to refer to it the  
21 proper way. If it is the same thing, then we  
22 should understand that.

23 THE COURT: Is there a difference in the  
24 manner of release?

25 THE WITNESS: In this case we're saying

1       they're the same.

2               THE COURT:    Okay.

3               MR. PERSONIUS:   Okay.   Thank you, Judge.

4               THE COURT:    All right.   Please move on.

5   BY MR. MANGO:

6       Q.   I believe we were -- we did 18.01.14.   Let's go  
7       to Exhibit 18.09.15, please.   And what does this  
8       emission unit relate to?

9       A.   It's a reservoir for wash oil.

10      Q.   Is this in the by-products department at  
11      Tonawanda Coke?

12      A.   Yes.

13      Q.   Is the bleeder or pressure release valve listed  
14      in here?

15      A.   No.

16      Q.   How about Exhibit 18.09.16?   What does this  
17      emission unit relate to?

18      A.   A unit that separates water from the wash oil.

19      Q.   Is this wash oil decanter in the by-products  
20      department?

21      A.   Yes.

22      Q.   Is the bleeder pressure/relief valve listed in  
23      here?

24      A.   No.

25      Q.   Let's go to Exhibit 18.09.17.   What does this

1 emission unit relate to?

2 A. A second decanter system for wash oil.

3 Q. Is the bleeder pressure release valve listed in  
4 here?

5 A. No.

6 Q. 18.09.18, please. How about this emission  
7 unit?

8 A. This is the number 1 weak liquor storage tank.

9 Q. Is that located in the by-products department  
10 at Tonawanda Coke?

11 A. You would have to look at the plan. It might  
12 be located at the other side of the plant.

13 Q. Okay. Actually, that's a good time. Let's  
14 talk about that. Let me show you, for  
15 identification purposes, Exhibit 18.01.

16 MR. MANGO: Your Honor, I'd ask to -- this  
17 exhibit is actually a much smaller scale of the  
18 real exhibit, which is larger in size. I'd ask to  
19 be able to approach the witness to give him this  
20 exhibit.

21 THE COURT: Okay. Do we have anything  
22 on -- yeah, there it is. Okay. You can approach.

23 Is there any objection to 18.01?

24 MR. LINSIN: No objection, your Honor.

25 MR. PERSONIUS: No objection.

1 THE COURT: All right. We'll received it  
2 into evidence.

3 (Government's Exhibit 18.01 was received  
4 into evidence.)

5 MR. MANGO: Great.

6 THE COURT: It can be published and we'll  
7 have Mr. Carlacci work off of the main document, if  
8 he needs to. Otherwise, he can stay with the one  
9 that's on the monitor.

10 BY MR. MANGO:

11 Q. So now with reference to 18.01, can you tell  
12 the jury -- first, just give the jury an idea of  
13 what 18.01 is that -- that you're looking at.

14 A. 18.01 is a plot plan of the facility  
15 identifying the emission points at Tonawanda Coke.

16 Q. Okay. And how -- how is this -- what relation  
17 does this have to the Title V application that  
18 we've been going through?

19 A. This is included in the Title V application.

20 Q. Okay. So this was submitted as part of  
21 Tonawanda Coke's application?

22 A. Correct.

23 Q. Received by the department?

24 A. Received by the department.

25 Q. And does this plot plan have the emission



1 points and emission source ID numbers listed on  
2 here?

3 A. Yes. It lists emission points and emission  
4 sources.

5 MR. MANGO: Your Honor, at this point, I'd  
6 like to -- if I could clip that up to the board, so  
7 the jury can just see the -- it's tough to publish  
8 that by holding it up. I would like to just clip  
9 it up.

10 THE COURT: I mean, they have it on the  
11 monitor.

12 MR. MANGO: Okay.

13 THE COURT: I think that's probably  
14 enough. If -- if anybody has trouble working off  
15 the monitor, just raise your hand, and then I'll  
16 have it put up for demonstration purposes. But  
17 it's a pretty clear exhibit on the -- on the  
18 monitor, so let's try it that way.

19 BY MR. MANGO:

20 Q. Okay. So let's go back. Now, with reference  
21 to 18.01, we can go back to 18 -- Exhibit 18.09.18.  
22 This was the exhibit I believe you wanted to  
23 reference the plot plan.

24 Is this weak liquor storage tank number 1 in  
25 the by-products department?

1 A. It's not in the by-products area. It's located  
2 behind the ammonia still.

3 Q. Is the bleeder/pressure release valve listed in  
4 this --

5 A. No, it's not.

6 Q. -- application for this emission unit?

7 A. No, it is not.

8 Q. Okay. Let's move to Exhibit 18.09.19. What  
9 does this emission unit relate to?

10 A. It's the second weak storage tank.

11 Q. Is the --

12 A. Weak liquor storage tank.

13 Q. Is the bleeder/pressure release valve listed in  
14 that application?

15 A. No, it is not.

16 Q. All right. And the last one.

17 Exhibit 18.09.20. What does this relate to?

18 A. It identifies the number 3 weak liquor storage  
19 tank.

20 Q. Is the bleeder/pressure release valve listed in  
21 here?

22 A. No, it is not.

23 Q. In fact, if you can look at 18.01, do you see  
24 the bleeder/pressure release valve notated anywhere  
25 on that exhibit?

1 A. I see no notation of any pressure release  
2 valve.

3 Q. Okay. So following -- following the Title V  
4 application being submitted to the DEC, does the  
5 facility get notified that you received the  
6 application?

7 A. Yes, they do.

8 Q. All right. What's -- if you can describe for  
9 the jury the next step or the steps in the process  
10 that DEC engages in in evaluating Title V  
11 applications?

12 A. There was a requirement to submit the  
13 application by a specified date. They meet that  
14 date. We notify them of that. We go through the  
15 process of building this permit that will  
16 eventually be public notice. We take comments from  
17 both the company and the public before the permit  
18 is given to EPA for a 45-day period.

19 Q. All right. And you take -- you take comments  
20 from the public?

21 A. From the public as well as the company.

22 Q. Now, if the department needs additional time to  
23 review the permit, how do you go about -- or review  
24 the permit application, I'm sorry. How does the  
25 department go about getting additional time to

1 review the permit application?

2 A. There's time periods that we -- we are required  
3 to review a permit by. They're codified in the  
4 Uniform Procedures Act. And in there also we can  
5 ask for an extension. We ask the company for that  
6 extension.

7 Q. Okay. And that's something -- you tell the  
8 company you need more time to go through this  
9 application?

10 A. Correct.

11 Q. And then they either agree or disagree?

12 A. Correct.

13 Q. Did the company agree in this case?

14 A. Yes, they did.

15 Q. Okay. Now, for this comment period -- I'm  
16 sorry, I may have missed it -- is there a  
17 requirement that the -- the application or any type  
18 of public notice be made?

19 A. Correct. There is a requirement to publish the  
20 draft permit in the -- in the local newspaper, and  
21 Tonawanda Coke would have to do that.

22 Q. Okay.

23 A. They draft a notice that they would publish.

24 Q. Did they do that in this case?

25 A. Yes, they did.

1 Q. And in that -- in that public notice, does it  
2 list the date in which comments must be received to  
3 the department by?

4 A. Yes, it will.

5 Q. Let me show you for identification purposes  
6 Government 18.17.

7 MR. MANGO: And absent an objection, your  
8 Honor, the government would move this into  
9 evidence.

10 MR. LINSIN: No objection, your Honor.

11 MR. PERSONIUS: No objection, your Honor.

12 THE COURT: Okay. 18.17 received. No  
13 objection.

14 (Government's Exhibit 18.17 was received  
15 into evidence.)

16 MR. MANGO: I'd ask it be published for  
17 the jury.

18 BY MR. MANGO:

19 Q. Now, Mr. Carlacci, what -- what are we looking  
20 at here? If we can focus on that.

21 A. This is a letter from Mark Kamholz with  
22 Tonawanda Coke, dated September 1st, 2001, to the  
23 permit administrator of DEC confirming a  
24 conversation for an extension on the comment  
25 period.

1 Q. Okay. So this -- this is Tonawanda Coke asking  
2 for an additional period of time to comment?

3 A. This is confirming that request that was  
4 approved by Richard Sweeney.

5 Q. Okay. Did you -- do you know if the department  
6 received from Tonawanda Coke any comments that they  
7 made to the draft permit?

8 A. I don't recall. I'd have to look through the  
9 file.

10 Q. Let me show you what's identified as Government  
11 Exhibit 18.02.

12 MR. MANGO: And, your Honor, absent an  
13 objection, the government would move this into  
14 evidence.

15 MR. LINSIN: Can we see the second page of  
16 this document, please. Or the final page. And the  
17 first page again, please.

18 No objection.

19 MR. PERSONIUS: No objection, Judge.

20 THE COURT: Okay. 18.02 received. No  
21 objection.

22 (Government's Exhibit 18.02 was received  
23 into evidence.)

24 THE COURT: It may be published. It is.

25 BY MR. MANGO:

1 Q. Mr. Carlacci, can you tell the jury the date of  
2 this document?

3 A. This is dated September 28th, 2001.

4 Q. And who is it -- who is it to?

5 A. It's from Mark Kamholz of Tonawanda Coke to the  
6 Department -- New York State Department of  
7 Environmental Conservation, Penny Dempsey.

8 Q. And what does this letter relate to?

9 A. It contains Tonawanda Coke's comments on the  
10 draft permit.

11 Q. Okay. I'd like you in particular to focus on  
12 that, item 34.2. Can you read this, please?

13 A. "Item 34.2 includes (one emission point)  
14 emission point ACBLD, for emission unit U-ACBLD.  
15 Currently there are two stacks for the redundant  
16 process systems with only one operating at a time.  
17 The change to the draft Title V permit should be as  
18 follows: Change emission point ACBLD to ACBLD1,  
19 and add emission point ACBLD2. The --"

20 Q. Okay. Keep reading.

21 A. "The pressure relief vent located on the roof  
22 of the emission unit U-ACBLD is considered a  
23 trivial activity under 6 NYCRR subpart  
24 201-3.3(c)(33). This is a notification, not a  
25 requested permit change."

1 Q. Okay. Now, you've previously discussed 6NYCRR,  
2 in particular, subpart 201-3 as it relates to  
3 exempt and trivial activities, correct?

4 A. Correct.

5 Q. Okay. Now, this is listing -- and you talked  
6 about a trivial -- an example of a trivial activity  
7 as a pressure relief vent stacks or stack, is that  
8 right?

9 A. An emergency pressure release vent.

10 Q. Okay. This is what your -- you were talking  
11 about, that that is the citation to the subpart  
12 that deals with an emergency pressure relief vent  
13 or stack?

14 A. Right.

15 Q. Is there any comment -- let's back out of this,  
16 please.

17 Is there any comments that -- if you can review  
18 this -- page 1. If we can go to page 2. And if we  
19 could go to page 3.

20 Is there any comment in here saying that we  
21 have a bleeder/pressure relief valve in the  
22 by-products unit that is a trivial activity?

23 A. Show me page 2, again, please.

24 There's no mention of a pressure relief valve  
25 in the by-products area.



1 Q. Okay. If we can go to exhibit -- show you  
2 Government Exhibit 18.03.

3 MR. MANGO: And absent an objection, your  
4 Honor, I would move this into evidence. This is  
5 two pages.

6 If we can -- I'm sorry, this is three pages.  
7 If we can go to the second and the third page.

8 MR. LINSIN: Can I see the first page,  
9 please?

10 THE COURT: Sure.

11 MR. LINSIN: No objection.

12 MR. PERSONIUS: No objection, Judge.

13 THE COURT: Okay. No objection. 18.03  
14 received.

15 (Government's Exhibit 18.03 was received  
16 into evidence.)

17 THE COURT: It may be published, please.

18 BY MR. MANGO:

19 Q. All right. Mr. Carlacci, can you please tell  
20 the jury -- if we can just focus on that part --  
21 what -- what this letter is, who it's from, who  
22 it's to.

23 A. This is a letter from the department to Mark  
24 Kamholz, Tonawanda Coke, documenting the changes  
25 that he requested to the permit.

1 Q. Okay. And so the department is responding to  
2 his comments that we just looked at?

3 A. Correct.

4 Q. And there's reference, again, to the pressure  
5 relief -- if I put that little mark there -- the  
6 pressure relief vent stack is -- is included there,  
7 is that right?

8 A. Correct.

9 Q. If you go -- if we can go to the second page,  
10 please. And the third page.

11 And this is -- this is included to Larry  
12 Sitzman and Cheryl Webster. They're -- they were  
13 in the -- Larry was in your air division, is that  
14 right?

15 A. Yes.

16 Q. Okay. So now at some point we've gone through  
17 the application, we've gone through the publishing  
18 in a newspaper, we've gone through the comment  
19 period. Do you know if Tonawanda Coke Corporation  
20 was granted a Title V permit?

21 A. At that point, the permit is proposed.

22 Q. I've moving on to this. I'm sorry.

23 A. Okay.

24 Q. At some point after this comment back and  
25 forth --

1 A. Then the permit is issued.

2 Q. Are you aware whether Tonawanda Coke  
3 Corporation was issued a Title V permit?

4 A. Yes.

5 THE COURT: Okay. Were they?

6 THE WITNESS: Yes, they were.

7 MR. MANGO: Your Honor, I'd ask to pull up  
8 Government Exhibit 18.18, for identification  
9 purposes.

10 And absent an objection, introduce this into  
11 evidence.

12 MR. LINSIN: Your Honor, we have no  
13 objection to this exhibit.

14 THE COURT: Mr. Personius?

15 MR. PERSONIUS: No objection.

16 THE COURT: Okay. Then 18.18 received.  
17 No objection.

18 (Government's Exhibit 18.18 was received  
19 into evidence.)

20 BY MR. MANGO:

21 Q. As we publish this to the jury, what is this,  
22 Mr. Carlacci, that we're looking at?

23 A. This is a permit transfer -- transmittal  
24 letter. It's the cover letter to the permit. From  
25 the department, regional permit administrator for

1 DEC, Steven Doleski signed it, addressed to Mark  
2 Kamholz at Tonawanda Coke.

3 Q. Okay. And it's dated when?

4 A. It's dated May 2nd of 2002.

5 Q. Let's focus in on these two paragraphs, please.  
6 Can you please start reading at "The permit is  
7 valid."

8 A. "The permit is valid only -- for only that  
9 project, activity, or operation expressly  
10 authorized. If modifications are desired after  
11 permit issuance, you must submit the proposed  
12 revisions and receive written approval from the  
13 permit administrator prior to initiating any  
14 change. If the department determines that the  
15 modification represents a material change in the  
16 scope of the authorized project, activity,  
17 operation, or permit conditions, you will be  
18 required to submit a new application for permit."

19 Q. And if you can start reading at this portion of  
20 the capitalized paragraph.

21 A. "Since failure to comply precisely with permit  
22 conditions may be treated as a violation of the  
23 environmental conservation law, you are requested  
24 to provide a copy of the permit to the project  
25 contractor, facility operator, and other persons

1 directly responsible for permit implementation, if  
2 any."

3 Q. Okay. Now, there's some -- there's a number of  
4 conditions listed in this Title V permit. Is that  
5 fair to say?

6 A. Correct.

7 Q. There's a couple of conditions that I'd like to  
8 focus on with you right now, okay? So I'd like to  
9 direct the attention to page 16 of this document  
10 and condition number 4. If we can focus in on  
11 condition 4.

12 Okay. What is condition 4 of Tonawanda Coke  
13 Corporation's Title V permit?

14 A. This is a citation right out of 6NYCRR 201-1.2.

15 Q. Okay. And what does it relate to?

16 A. It describes how you would handle a source that  
17 wasn't -- wasn't identified or permitted properly.

18 Q. What is --

19 A. What steps you would take to initiate  
20 permitting.

21 Q. Okay. And what is your understanding that  
22 condition 4 requires a facility to do if there's  
23 additional air sources of pollution that are not in  
24 the permit?

25 A. States that the owner or operator must apply

1 for a permit and must meet the applicable  
2 regulations of that source at that -- during  
3 that -- at the time of construction or  
4 modification.

5 Q. Okay. Now, with respect to your knowledge of  
6 this pressure relief valve/bleeder valve, you've  
7 come to learn about that in your review of the  
8 Tonawanda Coke file, is that correct?

9 A. Correct.

10 Q. You also mentioned you've -- you've seen it.

11 A. I've seen it.

12 Q. Was it in operation at the time you saw it?

13 A. I didn't check that.

14 Q. Okay. This pressure release valve -- did  
15 you -- did you get to look at any type of  
16 documentation for this bleeder/pressure release  
17 valve?

18 A. Yes, I did. I checked the strip charts that  
19 record the settings for the pressure relief valve.  
20 You can see on the strip charts when the valve was  
21 releasing gas.

22 MR. LINSIN: Your Honor, can we have a  
23 time frame, please?

24 THE COURT: Sure.

25 THE WITNESS: It would be during my

1 inspections in 2011.

2 MR. LINSIN: Time frame for the circular  
3 charts that the witness is discussing that he  
4 reviewed.

5 THE WITNESS: I seen the chart that was on  
6 the monitor that records the pressure at the site  
7 at Tonawanda Coke.

8 MR. LINSIN: In 2011? Thank you.

9 MR. MANGO: Well, have you since learned  
10 that this pressure release valve/bleeder was taken  
11 out of service in a --

12 MR. PERSONIUS: Your Honor, I object to  
13 the leading.

14 THE COURT: Yes. Sustained.

15 BY MR. MANGO:

16 Q. Did you see any emissions coming out of this  
17 pressure release valve/bleeder valve?

18 A. It's a gas, so you can't see it.

19 Q. Okay. Did you hear any emissions coming out?

20 A. I did not hear them.

21 Q. Okay. Do you know whether or not that pressure  
22 release valve or bleeder valve was actually still  
23 in service at the time you saw it?

24 MR. LINSIN: Objection. Asked and  
25 answered.

1 MR. MANGO: It's a different --

2 THE COURT: I think it is the same  
3 question. I'll sustain the objection.

4 MR. LINSIN: Thank you.

5 MR. MANGO: Let me ask you a question. If  
6 there is an emission unit that is being used to  
7 bleed coke oven gas into the atmosphere on  
8 intervals roughly every 20 or 30 minutes, that  
9 is -- that that emission unit releases coke oven  
10 gas in the atmosphere --

11 MR. PERSONIUS: Your Honor, I understand  
12 what Mr. Mango is trying to do. We don't have any  
13 evidence of that right now. I understand we may  
14 later on, but I think it needs to be clear that  
15 this is subject to --

16 MR. MANGO: This is a hypothetical. I'm  
17 asking the question.

18 MR. PERSONIUS: We don't have the -- the  
19 basis yet for it. I understand there's going to be  
20 later testimony. But I just want it clear on the  
21 record we don't have that yet.

22 THE COURT: Okay. But we do have the  
23 hypothetical, but we're going to have to start it  
24 all over again. So -- which is okay. I mean,  
25 whatever -- I mean, you don't disagree necessarily



1 with what Mr. Personius is saying, but your point  
2 is this is a hypothetical at this point?

3 MR. MANGO: Yes, your Honor.

4 THE COURT: Okay. Start again.

5 MR. MANGO: All right.

6 BY MR. MANGO:

7 Q. Let's talk about a hypothetical scenario. If  
8 you have a bleeder valve or pressure release valve  
9 being used to emit coke oven gas into the  
10 atmosphere as frequently as every 20 minutes or, if  
11 you want to consider every 30 minutes, and the  
12 releases last anywhere between five and 30 seconds  
13 at a time, would you consider that a violation --  
14 if it was not in the Title V permit, would you  
15 consider that a violation of condition 4?

16 A. Yes, I would.

17 Q. Why?

18 A. It requires a permit and needs to be identified  
19 in a Title V permit. And this condition says that  
20 they should do that.

21 Q. Okay. Would -- would it be considered an  
22 emergency pressure release vent or stack under 6  
23 NYCRR 201-3?

24 A. No.

25 Q. Why not?

1 A. It's not used in an -- in a fashion as defined  
2 in emergency. Emergency is defined in Part 201,  
3 and that -- that is an event that's unforeseen,  
4 that infrequently occurs. And in this case you're  
5 describing a situation that occurs quite  
6 frequently.

7 Q. If we can go to page 90, please, of this  
8 exhibit. If we can focus in on condition 96.  
9 Okay.

10 Now, condition 96 of the Title V permit, you  
11 see emission source there, 00009, is that right?

12 A. Correct.

13 Q. And that's related to -- do you remember what  
14 that's related to?

15 A. It relates to one of the quench towers.

16 Q. All right. Can you read A there, please?

17 A. A states, "A person may not operate a wet  
18 quench tower of a coke oven battery unless it is  
19 equipped with a baffle system designed to  
20 effectively reduce particulate emissions during  
21 quenching."

22 Q. If we can go to page 91, the next page, please.  
23 If we can focus in on condition 97. Can you read  
24 condition 97(a)?

25 A. Condition 97(a) states the same thing for

1 emission source 10. "A person may not operate a  
2 wet quench tower of a coke oven battery unless it  
3 is equipped with a baffle system designed to  
4 effectively reduce particulate emissions during  
5 quenching."

6 Q. Okay. Emission source 10, was that another one  
7 of the quench towers?

8 A. It's the other quench tower. There's two at  
9 the site.

10 Q. I'd ask you to refer to Exhibit 18.01 if you  
11 need to. But can you tell us which emission source  
12 10 is? Is it the west quench tower or the east  
13 quench tower?

14 THE COURT: Okay. Let's get that exhibit  
15 on the monitor, please at that point.

16 THE WITNESS: This is the east quench  
17 tower, emission source 10.

18 BY MR. MANGO:

19 Q. Okay. So that would be quench tower number 2?

20 A. Quench 2, correct.

21 Q. Okay. We can back out. Focus in there,  
22 please. There do you see --

23 A. This identifies emission point quench 1.

24 Emission source 9.

25 Q. So nine is the west tower?

1 A. The west tower, correct.

2 Q. That's the one with this 10 percent exclusion?

3 A. Correct.

4 Q. Prior to the Title V permit?

5 A. Correct.

6 Q. Does the Title V permit capture that 10 percent  
7 exclusion?

8 A. It does not.

9 Q. Okay. Let me ask you a hypothetical relating  
10 to -- if a Title V permit does not capture a  
11 previous exclusion in an Air 100, what controls?

12 A. You know, you try to apply some common sense.  
13 If we granted it before and we have no reason to  
14 doubt that we would grant it again, we would give  
15 them that exclusion.

16 Q. Okay. So let's assume, then, that the  
17 exclusion would carry over into the Title V permit  
18 even though it's not explicitly listed there. Is  
19 that what you're saying?

20 A. Correct.

21 Q. Okay. Let me ask you a hypothetical, then. If  
22 the exclusion is to use the quench tower less than  
23 10 percent of the time -- but I'm going to give you  
24 a hypothetical that if the quench tower is being  
25 used more than 10 percent of the time, in fact, it

1 is being used every other push from the coke oven.

2 You know what I'm talking about, right?

3 A. Yes.

4 Q. Every other push. It's being used on that  
5 frequency.

6 A. 50 percent of the time.

7 Q. Would that be a violation of the Title V  
8 permit?

9 A. Yes.

10 Q. Okay. Let's talk about quench tower number 2.  
11 For that quench tower at Tonawanda Coke, there was  
12 no exemption that you're aware of, correct?

13 A. Correct.

14 Q. In terms of 10 percent usage or how -- how much  
15 it was being used?

16 A. Correct.

17 Q. So condition 97 which relates to quench tower  
18 number 2, is that right?

19 A. Correct.

20 Q. That mandates that baffles must be installed in  
21 quench tower number 2?

22 A. Correct.

23 Q. So hypothetically speaking, if that quench  
24 tower is being used without baffles inside of it,  
25 would that be a violation of the condition?

1 A. Yes, it would be.

2 THE COURT: Let me ask you this question,  
3 because I -- I'm getting a little confused on  
4 quench tower number 2, emission source number 9.

5 MR. MANGO: Ten.

6 THE COURT: Nine and ten?

7 MR. MANGO: Right.

8 THE COURT: Okay. No, go ahead. Tell me  
9 what I'm going to say.

10 MR. MANGO: I think quench tower -- I  
11 think the evidence I heard is quench tower number 2  
12 is emission source 10, quench tower number 1 is  
13 emission source 9 as referenced.

14 THE COURT: Okay. If it's quench --  
15 Mr. Carlacci, if it's quench tower number 1, which  
16 is emission source number 9 and quench tower  
17 number -- leave it at that. Is that the west  
18 quench tower?

19 THE WITNESS: The west one would be quench  
20 1 --

21 THE COURT: All right.

22 THE WITNESS: -- emission source 9. The  
23 east would be quench 2, emission source 10.

24 THE COURT: Okay. Thank you.

25 MR. MANGO: Your Honor, I'd like to, at

1       this point, show Mr. Carlacchi Government  
2       Exhibit 131 for identification purposes.

3             And absent an objection, admit this into  
4       evidence.

5             THE COURT:   131?

6             MR. MANGO:   Yes, your Honor.   This is a  
7       multiple-page document.

8             THE COURT:   I'm sorry.   Bear with me.

9             MR. MANGO:   Yes, sir.

10            THE COURT:   I can't locate it on here.

11            (Discussion held off the record.)

12            THE COURT:   Okay.   What do have on the  
13       screen now, before it's published?   It doesn't look  
14       like 131.

15            MR. MANGO:   We zoomed in, your Honor.   It  
16       is.   It's just a little -- not too sharp.

17            MR. LINSIN:   Okay.   I'm satisfied, your  
18       Honor.

19            THE COURT:   All right.   Well, then we're  
20       all happy then.

21            MR. MANGO:   Subject to an objection, I  
22       would move this document into evidence, your Honor.

23            THE COURT:   How could there possibly be an  
24       objection now, Mr. Mango?   There's no objection,  
25       right?

1 MR. LINSIN: No, your Honor.

2 THE COURT: All right. Mr. Personius?

3 MR. PERSONIUS: I want to clarify: It's  
4 not just the letter, Judge, there's more to it?

5 MR. MANGO: Yes.

6 MR. PERSONIUS: Does this have the  
7 emission study with it? Is that what this is?

8 MR. MANGO: Your Honor, I expect the  
9 evidence will show if we move through this, this is  
10 an inventory of hazardous air pollutants that are  
11 included with this. It's a two-page cover letter  
12 followed by a hazardous air pollutant emission  
13 inventory prepared for Tonawanda Coke Corporation.

14 MR. PERSONIUS: Yes, Judge, understanding  
15 that, no objection.

16 THE COURT: Okay. And that's the way it's  
17 described on the exhibit list as well. So, okay.  
18 So we got actually two parts, okay, the letter and  
19 the addendum, so to speak.

20 Okay. 131 received, no objection.

21 (Government's Exhibit 131 was received  
22 into evidence.)

23 BY MR. MANGO:

24 Q. Okay. If we can move on, let's just focus on  
25 this. And why don't you tell the jury, please,



1 Mr. Carlacci, what -- what they are looking at.

2 A. This letter is focusing on a new NESHAP that  
3 regulates quench towers pushing and heat waste  
4 stacks. It's applicable if the facility emits, as  
5 a major source of hazardous air pollutants, over  
6 ten tons of an individual HAP or 25 tons total  
7 HAPs. And this document documents the emissions  
8 from the facility as a whole showing that it's  
9 below those thresholds and this NESHAP does not  
10 apply.

11 Q. Okay. So this is a letter from Tonawanda Coke  
12 to the DEC. And if you can, just read this last  
13 sentence here.

14 A. "The proposed rule only -- a proposed rule is  
15 applicable only to major sources" --

16 Q. I think -- I'm sorry. You're reading this  
17 where the green dot is on the screen. "That  
18 document --"

19 A. "That document demonstrates that TCC's  
20 Tonawanda New York facility is not a major source  
21 of HAPs."

22 Q. All right. And this letter is signed by who?  
23 Let's go to the second page, please.

24 A. Mark Kamholz with Tonawanda Coke.

25 Q. If we go to the third page, this begins the

1 hazardous air pollutant emission inventory, is that  
2 correct?

3 A. Correct.

4 MR. MANGO: Your Honor, if I could have  
5 just one moment, please.

6 THE COURT: Certainly.

7 BY MR. MANGO:

8 Q. I'd like to direct your attention to page 18 of  
9 this document. And there's a discussion about  
10 quenching in here, is that correct?

11 A. Correct.

12 Q. Ask you to read starting at "particulate  
13 emissions."

14 A. "Particulate emissions from quenching are  
15 typically large carbon particulate created by the  
16 break up of hot coke upon contact with water. PM  
17 emissions are a function of quench tower controls;  
18 i.e., use of baffles, and the quench water total  
19 dissolved solids level. The Tonawanda Coke quench  
20 tower has baffles for control of PM emissions."

21 Q. Okay. So the Tonawanda Coke Corporation is  
22 sending this document to DEC saying we have  
23 baffles?

24 A. Correct.

25 THE COURT: Okay. Enlarge the entire page

1 for me, please, Ms. DiFillipo. The full page,  
2 please. Okay. Just checking a number for a  
3 second. You referenced page 18. And where does  
4 that come in? Because this is 2-10. I don't see 18  
5 anywhere on there.

6 MR. MANGO: Yes, your Honor. This copy  
7 was not Bates marked. It is -- it's page 18 in the  
8 document. So that was more of a code to get us on  
9 the right page.

10 MR. PERSONIUS: For the record --

11 MR. MANGO: I'll refer to page 2-10 at the  
12 bottom.

13 THE COURT: Please.

14 BY MR. MANGO:

15 Q. Okay. If we could then go to 4-1, which would  
16 be page 23. 4-1, if we can go there. So now  
17 there's a section dealing with emissions from  
18 by-product plant equipment components, is that  
19 right?

20 A. Correct.

21 Q. And if we can go to the next page, 4-2, this  
22 has a table with a summary of the different types  
23 of -- let's focus on that section, please -- of the  
24 different components at the Tonawanda Coke  
25 Corporation, is that right?

1 A. Correct.

2 Q. Okay. And you do see listed here -- let's -- I  
3 want to direct your attention directly to this  
4 pressure release valve, number of components, it  
5 says one. What are the emissions that relate to  
6 that pressure release valve?

7 A. This is identifying one pressure relief valve  
8 in the coke oven system using -- using a published  
9 emission factor with a reference of total organic  
10 compound emissions in tons per year of .003.

11 Q. Can you tell the jury -- give the jury an  
12 example? How much are we talking about would be  
13 .0030 in terms of emissions? Is that a lot? A  
14 little?

15 A. It's a little, very little.

16 Q. Okay. So if -- I want to get back to what  
17 we've been talking about. Under 201-3, trivial and  
18 exempt activities, been talking about a trivial  
19 activity known as an emergency pressure release  
20 valve, right?

21 A. Correct.

22 Q. Okay. If an emergency pressure release valve  
23 is being used and emits .003 tons per year of  
24 emissions, would that be used as a trivial  
25 activity?

1 A. If it was an emergency relief valve, I don't  
2 believe you'd have an estimated emission for it.  
3 You wouldn't have a planned excursion where this  
4 valve went on in an emergency. You would have a  
5 emission of zero because you don't plan  
6 emergencies.

7 Q. Okay. But if we can focus on it, the .003, is  
8 that a significant amount of emissions or not a  
9 significant amount of emissions?

10 A. It's not a significant amount of emissions, but  
11 it's identifying a source, an emission point.  
12 Something that, to me, would require a permit.

13 THE COURT: Okay. Hold on one second.

14 Ms. DiFillipo, can you highlight the column  
15 names? Yeah, that dark portion up there. Okay.  
16 Thank you.

17 BY MR. MANGO:

18 Q. Is there any discussion -- if you'd like, I can  
19 give you the hard copy of this to flip through.  
20 But is there any discussion in this document where  
21 this pressure release valve is located?

22 A. Let me flip through the document. I don't  
23 recall it being located.

24 MR. MANGO: Your Honor, may I approach the  
25 witness?

1 THE COURT: What is the exhibit?

2 MR. MANGO: Exhibit 131 in paper format.

3 THE COURT: Thank you.

4 THE WITNESS: This document is a summary  
5 of emissions. It contains some of -- references to  
6 where the emission factors were obtained, but  
7 doesn't identify where any of the emission points  
8 or emission sources are at the plant.

9 BY MR. MANGO

10 Q. Okay.

11 A. No plan included.

12 Q. So let's look -- look back at your screen here,  
13 which is page 4-2. There's no reference to where  
14 this pressure release valve is located at Tonawanda  
15 Coke, this one component in that document?

16 A. It states this whole table is by-product plant  
17 area, and somewhere in the coke oven gas system.

18 Q. Okay. Now, let me ask you a hypothetical  
19 similar to the earlier hypothetical I asked you.

20 If you have a pressure release valve/bleeder  
21 valve that releases coke oven gas to the atmosphere  
22 as frequently as every 20 minutes or every 30  
23 minutes, if you want to use that, and the emissions  
24 from that, when it opens up, are somewhere between  
25 five and 30 seconds. You've got that?

1 A. Got it.

2 Q. Would emissions from that hypothetical be  
3 consistent with what is listed and highlighted here  
4 on page 4-2?

5 A. It could be.

6 Q. What if the emissions -- let's now go to a  
7 different hypothetical. If the emissions from the  
8 pressure release valve/bleeder valve are going off  
9 continuously for a long period of time, let's say  
10 an hour, okay, would that be consistent with the  
11 highlighted portion that is here?

12 A. I think it would result with more emissions  
13 than that as listed in this chart.

14 Q. Okay.

15 MR. PERSONIUS: Forgive me, Judge. I -- I  
16 missed the hypothetical. It had to do with an  
17 hour?

18 THE COURT: It was an hour's period of  
19 time.

20 MR. PERSONIUS: With what -- pardon me.  
21 With what frequency, your Honor? I mean, how often  
22 does it go for an hour? I don't know if that's --

23 THE COURT: Consistently, I think.

24 MR. PERSONIUS: Oh, so it's going all the  
25 time?

1 THE COURT: Yeah, during that hour period  
2 of time.

3 MR. PERSONIUS: Right. But then how  
4 many -- how many hours in a day? I mean --

5 THE COURT: How would I now that?

6 MR. PERSONIUS: Well --

7 THE COURT: Yeah, I know. Let's -- let's  
8 get it refined a little bit, right? Okay. Please.

9 MR. PERSONIUS: Sorry I wasn't clear.

10 THE COURT: No, you were clear. I only  
11 know what I heard. So we'll get him to amplify  
12 Mr. -- you're the "him," Mr. Mango.

13 MR. MANGO: I will, your Honor.

14 THE COURT: All right.

15 BY MR. MANGO:

16 Q. Let's -- let's expand that hypothetical. The  
17 pressure release valve/bleeder valve releases  
18 continuously for one hour. Let's assume that  
19 happens once per day. Would that be consistent  
20 with the emissions that are highlighted here on  
21 page 4.2?

22 A. I mean, you could do the math. It has the  
23 emission factor in kilograms per hour. It doesn't  
24 have the hours that were used here to calculate  
25 this .003. So to really give you an accurate



1 answer, I've got to have a calculator.

2 But, in general, the more it goes off, the more  
3 the emissions are. If this is based on seconds,  
4 then obviously minutes or hours would be a lot  
5 more.

6 THE COURT: Where do you see kilograms per  
7 hour?

8 THE WITNESS: In -- in the third column at  
9 the top, "Emission Factor." So there's -- there's  
10 conversions that were done to get to tons per --  
11 per year. There was some assumption here that this  
12 goes off once a year or for one second a year,  
13 or -- you know, there's -- there was assumptions  
14 made that are not in this chart. You know, all the  
15 information to calculate that number is not  
16 presented here.

17 THE COURT: Okay.

18 BY MR. MANGO:

19 Q. Okay. So to -- to accurately understand this  
20 pressure release valve that's highlighted here, you  
21 need to engage in some type of calculations to --  
22 to figure that out?

23 A. Correct. This would require an application,  
24 you know, with data. We would do a permit review  
25 and determine what the requirements would be.

1 Q. Okay. So -- so even sitting here today,  
2 though, without your calculator -- you mentioned I  
3 would need a calculator -- you -- you can't say  
4 with certainty this pressure release valve -- with  
5 the kilograms per hour source there, and the total  
6 tons per year there, is it fair to say you can't  
7 tell this jury how frequently this pressure release  
8 valve is releasing?

9 A. No, I cannot.

10 Q. Okay. I'd like to show you what's been marked  
11 for identification purposes Government's Exhibit  
12 18.04.

13 THE COURT: Okay. Before you go there --  
14 I mean, in follow-up to that question, is your  
15 answer that you can't tell if it was continuous for  
16 an hour or if it was every ten seconds and stopped  
17 at that?

18 THE WITNESS: In this chart, no, I can't  
19 tell that.

20 THE COURT: Okay. All right. Thank you.

21 MR. MANGO: Well, before -- I'd like to go  
22 back.

23 THE WITNESS: If I had my calculator, I  
24 could do it for you, but --

25 THE COURT: No, no, I'm not asking you to

1 do it, but I think when you say you can't determine  
2 the time of emissions, I mean, you don't know if  
3 it's an hour -- you don't know based on this. I  
4 mean, you could figure it out, I suppose. But at  
5 least in viewing it right now, you cannot tell if  
6 it is a ten-second emission or if it's an hour  
7 emission?

8 THE WITNESS: Correct.

9 THE COURT: Okay. In duration.

10 MR. MANGO: That's what I was going to get  
11 at. Thank you, your Honor. We can move off -- if  
12 we can go to Exhibit 18.04 for identification  
13 purposes.

14 And absent an objection, I would move this into  
15 evidence.

16 MR. LINSIN: No objection, your Honor.

17 MR. PERSONIUS: No objection. Thank you,  
18 Judge.

19 THE COURT: Okay. 18.04 received. No  
20 objection.

21 (Government's Exhibit 18.04 was received  
22 into evidence.)

23 MR. MANGO: Okay. If we can publish that  
24 and then focus on this part.

25 BY MR. MANGO:

1 Q. This is -- who is this letter sent from and who  
2 is it to?

3 A. This is a letter from Mark Kamholz with  
4 Tonawanda Coke, dated April 23rd, 2004, to Larry  
5 Sitzman, a regional air pollution control engineer.

6 Q. And what does this letter discuss?

7 A. It's relative to this minor -- minor source  
8 status of a HAP.

9 Q. Okay. And it relates to this exhibit we just  
10 looked at, is that correct, Exhibit 131?

11 A. Yes, it does.

12 Q. If we can go to the bottom paragraph here, off  
13 the screen.

14 So it's starting with, "We propose that minor  
15 source status be monitored." What does that mean?

16 A. They're offering conditions to maintain a minor  
17 source status in their Title V permit.

18 THE COURT: Who's making that offer?

19 THE WITNESS: This is Tonawanda Coke.

20 THE COURT: Thank you.

21 BY MR. MANGO:

22 Q. Okay. If we can -- now, at some point, there  
23 is an expiration date on a Title V application, is  
24 that right?

25 A. Correct.

1 Q. I mean, on a Title V permit.

2 A. Correct. They're good for five years.

3 Q. So if Tonawanda Coke's Title V permit was  
4 issued in 2002, five years from then would be 2007?

5 A. Correct.

6 Q. I'd like to show you what's been identified  
7 Government Exhibit 18.06 for identification  
8 purposes.

9 MR. MANGO: And absent an objection, I'd  
10 move this into evidence, your Honor, as the renewal  
11 that was submitted.

12 THE COURT: Okay. It might be an  
13 appropriate time to break. All right? Well, let's  
14 find out, is there an objection? Can you tell me  
15 that?

16 MR. LINSIN: I can tell you that. No  
17 objection, your Honor.

18 MR. PERSONIUS: No objection, your Honor.

19 THE COURT: Okay. Then we will receive  
20 18.06. No objection.

21 (Government's Exhibit 18.06 was received  
22 into evidence.)

23 THE COURT: And, ladies and gentlemen, you  
24 look hungry, and you persuaded me to let you go now  
25 for lunch. We'll start again at 2:00 o'clock. Get

1       here right about 2:00, and we will go until -- we  
2       have to break by 4:45 tonight, okay, so right  
3       around in that vicinity. I have a -- a meeting I  
4       can't reschedule here. But so -- and that's  
5       basically the time we're going to try to break  
6       anyway. So 4:45 will be the target time just so  
7       everybody knows. Okay?

8               Have a great lunch. Don't talk about the case.  
9       Keep in mind it's very important to both sides.  
10      Don't discuss it. And we'll see you here at what  
11      time?

12             THE JURY: 2:00 o'clock.

13             THE COURT: Thank you.

14             (Jury excused from the courtroom.)

15             THE COURT: Any matters we have to discuss  
16      before we break?

17             MR. PERSONIUS: Thank you, your Honor.

18             MR. MANGO: No, your Honor.

19             MR. LINSIN: Thank you, your Honor.

20             THE COURT: Thank you very much.

21             (Lunch recess was taken.)

22             (Jury seated.)

23             THE COURT: Good afternoon, ladies and  
24      gentlemen. Please have a seat. Hope you had a  
25      good lunch.

1 All right. Okay. Mr. Carlacci, if you would  
2 resume the stand. You remain under oath for -- we  
3 are resumed in the case of United States versus  
4 Tonawanda Coke Corporation and Mark Kamholz. The  
5 attorneys and parties are back present. Our jury  
6 is here ready, willing, and able to forge ahead.  
7 Roll call waived, and I guess we're ready to go.  
8 Counsel.

9 MR. MANGO: Yes, your Honor. Thank you.

10 BY MR. MANGO:

11 Q. I think we left off Government Exhibit 18.06,  
12 Mr. Carlacci, had been admitted into evidence.

13 Can you just tell the jury, if we can focus on  
14 this section here, what this document is.

15 THE COURT: Let's publish, I think,  
16 please.

17 MR. MANGO: Oh, yes, please.

18 THE COURT: All right. Mr. Mango, give me  
19 the number on that again, please.

20 MR. MANGO: Yes. Exhibit 18.06.

21 THE COURT: Okay. And that was received  
22 into evidence just before we broke?

23 MR. MANGO: Yes.

24 THE COURT: Okay. Thank you.

25 BY MR. MANGO:

1 Q. Can you tell the jury, please, Mr. Carlacci,  
2 what Exhibit 18.06 is?

3 A. This is a letter from Tonawanda Coke dated  
4 October 20th, 2006, to the DEC permit  
5 administrator. A cover letter describing a renewal  
6 application for a Title V permit.

7 Q. All right. So as you mentioned before, the  
8 original Title V permit had an expiration date.

9 A. The expiration date was sometime in 2007.

10 Q. Okay. And so at this point this is the renewal  
11 submitted to get another Title V permit?

12 A. Correct. Within -- 201 states that no -- no --  
13 within 18 months and no later than six months of  
14 the expiration date you're required to submit a  
15 permit application for renewal.

16 Q. Have you looked through this renewal  
17 application?

18 A. Yes, I have.

19 Q. Okay. I'm going to ask you a couple questions  
20 about that. Is there any mention in this renewal  
21 application that quench tower number 2 is being  
22 used without baffles?

23 A. No, there's not.

24 Q. Is there any indication in this renewal  
25 application that quench tower number 1 is being



1       used more than 10 percent of the time?

2       A.   No, there's not.

3       Q.   And, finally, is there any indication in this  
4       renewal application that there is a bleeder or  
5       pressure release valve being used in the  
6       by-products department?

7       A.   No, there is not.

8       Q.   I'd like to show you for identification  
9       purposes exhibit -- actually, I'd like to stay on  
10      18.06 for a moment.   If we can go to page number 4,  
11      and then -- actually, to the fifth page, please.

12           Do renewal applications contain a  
13      certification?

14      A.   Yes, they do.   Same as the certification we  
15      read earlier --

16      Q.   Okay.

17      A.   -- for the initial application.

18      Q.   Okay.   Let's focus on that.   And who signed  
19      the -- as responsible officer in this top box?

20      A.   Mark Kamholz.

21      Q.   That's for Title V certification?

22      A.   Correct.

23      Q.   And he signed on October 20th of 2006?

24      A.   Correct.

25      Q.   Is it fair to say this last line says, "I

1 believe the information is true, accurate, and  
2 complete. I'm aware that there is significant  
3 penalties for submitting false information,  
4 including the possibility of fines and imprisonment  
5 for knowing violations"?

6 A. That's exactly what it says.

7 Q. All right. If I can show you for  
8 identification purpose Exhibit 18.07.

9 MR. MANGO: And if there's no objection,  
10 your Honor, I would move to admit this into  
11 evidence as being part of the renewal application.

12 MR. PERSONIUS: I just need a minute,  
13 Judge. I apologize.

14 THE COURT: Certainly.

15 MR. LINSIN: How many pages is this  
16 document, please?

17 MR. MANGO: It's four pages, your Honor.

18 MR. LINSIN: Can we just -- could I  
19 request that we scroll through them?

20 THE COURT: Sure.

21 MR. LINSIN: Okay. No objection.

22 THE COURT: You can't afford to blink,  
23 Mr. Piaggione, or Ms. DiFillipo has them already  
24 scrolled.

25 MR. PIAGGIONE: Story of my life. Always

1       blinking at the wrong time.

2               THE COURT:   It's the story of many of us.

3               All right.   And then over the weekend we're  
4       going to get Mr. Personius a tutorial on managing  
5       papers in a binder.   I hope you don't mind.

6               MR. PERSONIUS:   I'm only supposed to be  
7       treated this way at home, Judge.   I apologize.   I  
8       just got to quickly look at it, Judge.   I'm sorry.

9               Your Honor, with the understanding that this  
10       was just part of the renewal application that was  
11       all submitted at the same time, we have no  
12       objection.   Again, I'm not sure why there's a  
13       separate marking, but maybe they were submitted  
14       stapled separately.   I don't know.

15               THE COURT:   Okay.   So 18.07 is a part of  
16       18.06?

17               MR. MANGO:   Yes, Your Honor.

18               THE COURT:   All right.   And that -- that  
19       helps clarification-wise --

20               MR. PERSONIUS:   Thank you, Judge.

21               THE COURT:   -- so I'll receive it.  
22       There's no objection.   18.07 in.

23               (Government's Exhibit 18.07 was received  
24       into evidence.)

25               MR. MANGO:   Okay.   And I ask that it be

1 published for the jury.

2 BY MR. MANGO:

3 Q. And Mr. Carlacci, if you can, tell the jury  
4 what is Exhibit 18.07.

5 A. This exhibit is a list of exempt activities at  
6 the facility, and it's required to be submitted  
7 with every Title V application.

8 Q. Okay. Or renewal application?

9 A. Or renewal application, correct.

10 Q. Okay. So any of the exempt activities need to  
11 be submitted to the department?

12 A. Correct.

13 Q. Okay. Now, we've been talking about trivial  
14 activities as well, an emergency pressure relief  
15 event or stack. Trivial activities don't need to  
16 be reported, is that correct?

17 A. That's correct.

18 THE COURT: All right. Mr. Mango, you  
19 sometimes refer to exempt and exclusion. Is that  
20 -- is there any distinction?

21 MR. MANGO: I'll ask the witness that  
22 question, your Honor.

23 THE COURT: Fair enough.

24 BY MR. MANGO:

25 Q. Mr. Carlacci, this -- this form here says

1 exempt -- exempt activities. Is that the language  
2 that's used in the regulation?

3 A. Exempt activities would be those sources that  
4 do not require a permit, but still must meet the  
5 applicable reg for -- for maintenance of equipment,  
6 maintenance of any emissions that come out of that  
7 source, or if it has control, maintenance of that  
8 control equipment. But it doesn't need a  
9 particular permit. If -- or say a silo is an  
10 exempt activity that has a bag house storing, let's  
11 say, salt. If the bag house was not there, it  
12 wouldn't be exempt. If the bag house is improperly  
13 maintained, it would not be exempt. The exempt  
14 activities, the total of emissions from those, are  
15 still required to be included in determining if  
16 you're Title V applicable. The emissions from them  
17 exempt activities, plus those that are required to  
18 have a permit as a total exceed that source  
19 threshold in Title V requires a Title V permit. So  
20 that's why we ask for the list, and the  
21 calculations of emissions should be included in the  
22 application. Trivial activities are those that  
23 emissions are -- are not of concern.

24 Q. Okay. So if -- if there's been any reference  
25 on my part, I apologize. Excluded activities,

1       that's not a term you used in the -- in the  
2       regulations?

3       A. Trivial is -- is the other section that defines  
4       those things that are not exempt, that do not  
5       require a permit.

6       Q. Okay. So the real distinction is between  
7       exempt and trivial activities?

8       A. Correct.

9       Q. Okay.

10               THE COURT: Thank you.

11       BY MR. MANGO:

12       Q. And in this document there's no mention of a  
13       bleeder or pressure release valve in the  
14       by-products unit, is there?

15       A. Not on this page.

16       Q. If we can go to the next page.

17       A. Not on this page either.

18       Q. Okay. Give us a number. Is that 02 and 03?  
19       Yes?

20       A. It's 02.

21       Q. Now 03?

22       A. 03, no mention on this page also.

23       Q. And then 04?

24       A. No mention on that page also.

25       Q. Okay. I'd like to show you now for

1 identification purposes Exhibit 19-15.

2 MR. MANGO: And I would offer that into  
3 evidence, your Honor, if there is no objection.

4 There is handwriting and I believe the witness  
5 would be able to identify this handwriting, if  
6 necessary.

7 MR. LINSIN: No objection, your Honor.

8 MR. PERSONIUS: No objection, Judge.

9 THE COURT: Okay. 19.15 received. No  
10 objection.

11 (Government's Exhibit 19.15 was received  
12 into evidence.)

13 MR. MANGO: I'd ask that that be published  
14 for the jury.

15 BY MR. MANGO:

16 Q. And if we can -- if you can first just tell the  
17 jury what we're looking at here, the date of the  
18 letter.

19 A. The date of this letter is November 24th, 2009,  
20 from Mark Kamholz from Tonawanda Coke to Larry  
21 Sitzman the RAPCE.

22 BY MR. MANGO:

23 Q. Okay. At -- the RAPCE at the time, okay. If  
24 we can focus in on that. What is this letter  
25 telling the department?

1 A. It's telling the department that Tonawanda Coke  
2 has reinstalled baffles on its number 2 quench  
3 tower.

4 Q. And that note in the upper right corner, whose  
5 handwriting is that?

6 A. Cheryl Webster.

7 Q. She is an engineer in your department?

8 A. Yes, she is.

9 THE COURT: All right. You made mention  
10 of the RAPCE again. That's the regional air  
11 pollution --

12 THE WITNESS: Regional air pollution  
13 control engineer.

14 THE COURT: Control engineer, okay.

15 MR. MANGO: Great. I'd like to show you  
16 now what's identified as Government Exhibit 19.16.

17 And I would offer this into evidence subject to  
18 any objection.

19 MR. LINSIN: Your Honor, I -- I have just  
20 an inquiry. Fundamentally I don't object to the  
21 authenticity of the document. This document and  
22 the last document are correspondence that are  
23 responsive to certain NOV's, notices of violations,  
24 that were issued. And my question is simply  
25 whether the government intends to simultaneously



1       introduce the NOV's that prompted these  
2       notifications. I believe for purposes of  
3       completeness and clarity, those would be very  
4       important.

5               MR. MANGO: No, your Honor, we were not,  
6       as that relates to other matters subject of civil  
7       issues that I don't think are -- are necessary  
8       to -- to -- to come in in this case or -- or  
9       relevant to civil issues. But the government is  
10      simply offering this to show that an admission,  
11      in -- in sense by the Tonawanda Coke Corporation  
12      that there were no baffles in the quench tower  
13      number 1, similar to that letter we just looked at  
14      that there were no baffles in quench tower number  
15      2.

16             MR. LINSIN: And, your Honor, the NOV to  
17      which this letter is responsive, as I recall, was  
18      issued during the period of the indictment. And  
19      the government is offering these, I think, for -- I  
20      mean, we'll do it ourselves, if need be, but we  
21      think for fairness purposes they should be offered  
22      simultaneously.

23             THE COURT: Well, I don't know if it's  
24      necessary for completeness. That's what you're  
25      arguing. Your proffer on this is with respect to

1 the installation of the baffles on number 1?

2 MR. MANGO: Yes, your Honor.

3 THE COURT: Yeah, I'll allow it for that  
4 purpose. Objection overruled.

5 You may proceed, and it is received into  
6 evidence over objection. So that's 19.16?

7 (Government's Exhibit 19.16 was received  
8 into evidence.)

9 MR. MANGO: Yes, your Honor. And I'd ask  
10 that it be published, and if we could just focus in  
11 on that section.

12 BY MR. MANGO:

13 Q. If you could, tell the jury what this is,  
14 Mr. Carlacci.

15 A. This is a letter from Robert Kolvek, the  
16 Tonawanda Coke Corporation dated January 25th, 2010  
17 to Mr. Larry Sitzman of DEC.

18 Q. Okay. And it's stating that -- what with  
19 respect to baffles?

20 A. Stating that Tonawanda -- Tonawanda Coke  
21 Corporation has installed baffles on its number 1  
22 quench tower.

23 Q. All right. Let's talk about monitoring and  
24 compliance that needs to be done under Title V.  
25 You had discussed that, is that right, yesterday?

1 All right. Are there forms that must be  
2 submitted to the department by Title V facilities  
3 that indicate whether they're in compliance with  
4 their Title V permit?

5 A. Yes, there are. Every six months and annually  
6 a deviation report must be submitted that lists  
7 compliance with all the conditions in the permit.  
8 Annually a certification is submitted that does the  
9 same thing along with the deviation report, and  
10 also describes any violations and how they  
11 addressed them --

12 MR. MANGO: Okay. If we could pull up  
13 Government Exhibit 31 for identification purposes.

14 And I would move this into evidence, your  
15 Honor, absent an objection.

16 THE COURT: Who prepares the deviation  
17 report?

18 THE WITNESS: The burden is on the company  
19 to prepare these reports. It was part of the  
20 Title V requirements.

21 THE COURT: Okay. What -- what exhibit do  
22 we have now?

23 MR. MANGO: Thirty-one. If we could pull  
24 up Exhibit 31.

25 MR. LINSIN: No objection, your Honor.

1 MR. PERSONIUS: No objection, Judge.

2 THE COURT: Okay. Thirty-one received.

3 No objection.

4 (Government's Exhibit 31 was received into  
5 evidence.)

6 MR. MANGO: Thank you, your Honor. And  
7 I'd ask that this be published to the jury.

8 THE COURT: Okay.

9 BY MR. MANGO:

10 Q. And, Mr. Carlacci, can you tell the jury what  
11 Exhibit 31 is?

12 A. This is the cover sheet of an annual report for  
13 the year 2005 documenting certification of truth,  
14 accuracy, and completeness from Tonawanda Coke to  
15 the department.

16 Q. Okay. And if -- the facility contact here is  
17 listed as who?

18 A. Mark Kamholz.

19 Q. His title?

20 A. Manager, environmental control.

21 Q. All right. And the responsible officer or the  
22 title of that is who?

23 A. Gerald A. Priamo, P-R-A-M-O[sic].

24 Q. And what's his title?

25 A. Plant manager.

1 Q. Okay. And if we can focus in on that part.  
2 That -- that certification essentially is saying  
3 that this is certified under penalty of law to be  
4 true?

5 A. Correct.

6 Q. Okay. Now, if we can go to the next page.

7 THE COURT: Whose signature is that?

8 MR. MANGO: Do you know whose signature  
9 that is, Mr. Carlacci?

10 THE WITNESS: I'm going to guess that's  
11 Priamo, if we can go back and see the initial As in  
12 this. Gerald A. Priamo. It looks like a Gerald A.  
13 Priamo signed it.

14 MR. PERSONIUS: Judge, rather than have a  
15 record where he's guessing, I'm at least prepared  
16 to stipulate that that's Mr. Priamo's signature.

17 MR. MANGO: Okay. So stipulated.

18 MR. LINSIN: No objection, your Honor.

19 THE COURT: All right.

20 BY MR. MANGO:

21 Q. If we could go to the second page of this  
22 exhibit. Page 2. Okay. So why don't you tell the  
23 jury, is this one of these deviation reports?

24 A. Correct. This is a deviation report listing  
25 all the applicable requirements, a short

1 description, the compliance status, whether it was  
2 continuous or intermittent, a method used to  
3 determine compliance, and whether or not that was  
4 deviation.

5 Q. Okay. And with respect to condition 4 listed,  
6 is there any deviation noted?

7 A. No deviation noted.

8 Q. If we could go to page 6, please. Okay. With  
9 respect to conditions 96 and 97, do you remember  
10 those conditions we just talked about in the  
11 Title V permit?

12 A. Those were the two relative to the quench  
13 tower.

14 Q. Yes. With respect to conditions 96 and 97,  
15 does it list any deviation?

16 A. Correct. It lists a description compliance  
17 certification for quench tower. Status,  
18 continuous. No deviation.

19 THE COURT: How do we know a deviation  
20 report and monitoring report is the same thing?

21 THE WITNESS: The monitoring -- the  
22 deviates report is this right here. If there was a  
23 deviation, you would detail that in a separate  
24 report and then annually would summarize all those  
25 deviations to determine what you did. You know, if

1       it's still occurring, if there was compliance  
2       issues, et cetera.

3               THE COURT:   And then you get this  
4       monitoring report from the facility?

5               THE WITNESS:   Correct.   The facility fills  
6       this out, does their monitoring based upon what we  
7       agreed on is in the Title V permit.

8               THE COURT:   But they self-monitor?

9               THE WITNESS:   Basically.

10              THE COURT:   Okay.

11   BY MR. MANGO:

12       Q.   So to follow up with another question, this  
13       page that we're physically looking at, this is  
14       created by the facility?

15       A.   Yes.

16       Q.   And sent to DEC in this manner?

17       A.   Yes.

18       Q.   DEC doesn't fill this -- these items out?

19       A.   No.

20              MR. MANGO:   Okay.   If we can move to  
21       Exhibit 32, please, for identification purposes.  
22       And absent an objection, I would ask that this be  
23       admitted into evidence.

24              THE COURT:   Okay.   Exhibit 32.

25              MR. LINSIN:   No objection, your Honor.

1 MR. PERSONIUS: No objection, Judge.

2 THE COURT: Okay. Received into evidence.

3 No objection.

4 (Government's Exhibit 32 was received into  
5 evidence.)

6 BY MR. MANGO:

7 Q. So what we just looked at, Exhibit 31, was an  
8 annual for reporting period 1/1/05 to 12/31/05.

9 Now, with respect to Exhibit 32, what is the report  
10 type listed at the top?

11 A. This report type is a semi-annual report.

12 Q. All right. And the period of time?

13 A. For the first six months in 2005.

14 Q. All right. If we can go to the second page of  
15 this document. Now, the second page here, this is  
16 the start of the semi-annual monitoring report, is  
17 that right?

18 A. Correct.

19 Q. The actual spreadsheet version, there's -- it  
20 starts at condition 24. Why is that?

21 A. In the beginning of the permit, usually it has  
22 conditions that are codified in the reg exactly  
23 verbatim. Like 201, that says "You must submit a  
24 semi-annual report." There's nothing different  
25 about that condition. It's in the rule. These



1 conditions, you know, may -- may have been altered  
2 slightly that you develop your own monitoring  
3 specification, and the department added to the  
4 monitoring that was required.

5 Q. Okay. So let's say condition 4 is not there.  
6 Was that not necessary in a semi-annual report?

7 A. Not necessary in a semi-annual report.  
8 Required in the annual monitoring report.

9 Q. Okay. If we could go to page -- the page 3 of  
10 this document, the next page.

11 So condition 96 at the bottom there -- is there  
12 though. So condition 96 had to be certified on a  
13 semi-annual basis?

14 A. Correct.

15 Q. In addition to an annual basis?

16 A. Correct.

17 Q. And here it says, "No deviation," is that  
18 right?

19 A. That's what it says.

20 Q. Okay. If we could go to page 3 of -- I'm  
21 sorry -- page 4 of this exhibit. And condition 90  
22 is there as well, is that right?

23 A. That's correct.

24 Q. No deviation?

25 A. Correct.

1 Q. Let me show you Exhibit 33, please, for  
2 identification purposes.

3 MR. MANGO: And absent an objection, your  
4 Honor, I would move that into evidence.

5 MR. LINSIN: No objection, your Honor.

6 MR. PERSONIUS: No objection, Judge.

7 THE COURT: Okay. Thirty-three received  
8 into evidence. No objection. It may be published.

9 (Government's Exhibit 33 was received into  
10 evidence.)

11 BY MR. MANGO:

12 Q. Now, for this exhibit that we have up, what  
13 report type is it, and what reporting period is it  
14 for?

15 A. This is an annual report for the period -- for  
16 the year 2006.

17 Q. If we can look at page 2 of this exhibit.  
18 Condition number 4 is listed there. Do you see  
19 that?

20 A. Correct.

21 Q. Is there any deviation reported?

22 A. No deviations noted.

23 Q. If we could go to page 6 of this exhibit.

24 Ninety-six and 97, any deviation reported?

25 A. No deviations noted.

1 Q. Move to Exhibit 34. I'll show you that for  
2 identification purposes. Exhibit 34.

3 MR. MANGO: Absent an objection, move that  
4 into evidence, your Honor.

5 MR. LINSIN: No objection.

6 MR. PERSONIUS: No objection, Judge.

7 THE COURT: Thirty-four received. No  
8 objection.

9 (Government's Exhibit 34 was received into  
10 evidence.)

11 MR. MANGO: I'd ask that that be published  
12 for the jury.

13 BY MR. MANGO:

14 Q. And if you could tell the jury, Mr. Carlacci,  
15 what's the report type and the reporting period?

16 A. Report type, semi-annual, for the first six  
17 months of 2006.

18 Q. Okay. And if we can go to page 3 of that  
19 document. Condition 96, any deviation listed?

20 A. No deviation listed.

21 Q. Next page, please. Page 4, condition 97, any  
22 deviation listed?

23 A. No deviation listed.

24 Q. I'd like to show you Government Exhibit 35,  
25 and -- for identification purposes.

1 MR. MANGO: And I ask that that be  
2 admitted into evidence, your Honor, subject to an  
3 objection.

4 MR. LINSIN: No objection, your Honor.

5 MR. PERSONIUS: No objection, Judge.

6 MR. MANGO: Thirty-five.

7 THE COURT: Thirty-five received into  
8 evidence. No objection. May be published.

9 (Government's Exhibit 35 was received into  
10 evidence.)

11 MR. MANGO: Thank you, your Honor. I ask  
12 that that be published.

13 BY MR. MANGO:

14 Q. And if you could look at the report type and  
15 the reporting period, Mr. Carlacci, and tell the  
16 jury what that is.

17 A. This is an annual report for the year 2007.

18 Q. Okay. If we could go to page 2. Is there any  
19 deviation listed for condition number 4?

20 A. No deviations listed.

21 Q. If we can go to page 6 of this document.  
22 Conditions 96 and 97, any deviation listed?

23 A. No deviation mentioned.

24 Q. If we can take a look at Government Exhibit 36,  
25 for identification purposes.

1 MR. MANGO: And subject to an objection,  
2 move that into evidence, your Honor.

3 MR. LINSIN: No objection.

4 MR. PERSONIUS: No objection, your Honor.

5 THE COURT: All right. Thirty-six  
6 received. No objection.

7 (Government's Exhibit 36 was received into  
8 evidence.)

9 MR. MANGO: I'd ask that that be published  
10 for the jury.

11 BY MR. MANGO:

12 Q. And if you could tell the jury, Mr. Carlacci,  
13 the report type and the reporting period.

14 A. This is a semi-annual report for the first six  
15 months of 2007.

16 Q. If we could go to page 3 of that document.  
17 Condition 96 at the bottom, any deviation listed?

18 A. No deviations.

19 Q. Page 4, please. Any deviations listed for  
20 exhibit -- condition 90?

21 A. No.

22 Q. Take a look at Government Exhibit 37, for  
23 identification purposes.

24 MR. MANGO: And subject to an objection,  
25 your Honor, the government would move that into

1 evidence.

2 MR. LINSIN: No objection, your Honor.

3 MR. PERSONIUS: No objection, Judge.

4 THE COURT: Okay. Thirty-seven received.  
5 No objection.

6 (Government's Exhibit 37 was received into  
7 evidence.)

8 MR. MANGO: I'd ask that that be  
9 published.

10 BY MR. MANGO:

11 Q. And, Mr. Carlacci, can you tell the jury the  
12 report type and the reporting period?

13 A. This is an annual report for the year 2008.

14 Q. Okay. And if we can go to page 2, condition  
15 number 4, any deviation listed?

16 A. No.

17 Q. If we could go to page 6, conditions 96 and 97,  
18 any deviation listed?

19 A. No.

20 Q. Finally, I'd like to show you Government  
21 Exhibit 38, for identification purposes.

22 MR. MANGO: And subject to an objection,  
23 move that into evidence, your Honor.

24 MR. LINSIN: No objection, your Honor.

25 MR. PERSONIUS: No objection, Judge.

1 THE COURT: All right. Exhibit 38  
2 received. No objection.

3 (Government's Exhibit 38 was received into  
4 evidence.)

5 MR. MANGO: Thank you, your Honor. And  
6 I'd ask that that be published.

7 BY MR. MANGO:

8 Q. And, Mr. Carlacci, can you tell the jury the  
9 report type and the reporting period?

10 A. This is a semi-annual report for the first six  
11 months of 2008.

12 Q. If we could go to page 3 of that document.  
13 Condition 96 at the bottom there, any deviation  
14 reported?

15 A. No.

16 Q. And the next page, page 4, please. Any  
17 deviation listed for condition 97?

18 A. No.

19 Q. Okay. I want to switch gears now. You've --  
20 we have gone through a lot of documents, and during  
21 your testimony, when you were talking about your  
22 duties and as an environmental engineer 2, I  
23 believe you mentioned that you were involved in an  
24 air study in the Tonawanda area.

25 A. Correct.

1 Q. Is that right?

2 A. Yes.

3 Q. Okay. If you could, tell the jury how that air  
4 study began.

5 THE COURT: Time frame, please.

6 BY MR. MANGO:

7 Q. When did -- when did the air study, the DEC air  
8 study begin?

9 A. We did two -- two rounds of sampling. There --  
10 there was canisters that we did as well as a  
11 full-blown study. The canisters we did was  
12 in 2006, and the study started in July of 2007.

13 Q. Okay. So 2006 is when you took canister  
14 samples?

15 A. Correct.

16 Q. Did anything happen before 2006 that prompted  
17 the DEC to start taking canister samples?

18 A. We took -- what prompted us to do that was the  
19 Clean Air Coalition had taken some ambient air  
20 samples in -- in that industrial area. And that --

21 MR. PERSONIUS: Objection, your Honor. I  
22 don't think we need more than that to answer the  
23 question. I'm concerned if the witness continues  
24 to testify, he'll get into an area we've agreed  
25 will not be part of the trial. The question was --



1 I won't say --

2 THE COURT: The question is what  
3 occasioned the taking of the air sample.

4 MR. PERSONIUS: And he answered. He said  
5 it was something from this group called the Clean  
6 Air Coalition.

7 THE COURT: Right. And the one ruling  
8 related to no testimony about the -- the results.

9 MR. PERSONIUS: Exactly. And that's where  
10 I was concerned the witness was going.

11 MR. MANGO: Right. But my understanding,  
12 your Honor, was we've got to have an understanding  
13 of at least that there was some concern from those  
14 results that prompted the DEC to do their own  
15 canister studies.

16 THE COURT: Okay. Well, I think the  
17 witness has testified that that's what occasioned  
18 the DEC's activity.

19 MR. MANGO: Yeah.

20 THE COURT: So you can move from there.

21 MR. MANGO: Yes.

22 BY MR. MANGO:

23 Q. Okay. Briefly, though, you mentioned the Clean  
24 Air Coalition. What is the Clean Air -- Clean Air  
25 Coalition?

1 A. It's residents of Tonawanda that had concern  
2 with their environment --

3 Q. Okay.

4 A. -- and were organized and took some action.

5 Q. Okay. And they presented their results to you?

6 A. Yes.

7 Q. And that prompted you, then, as you're saying  
8 now, to take canister samples?

9 A. We took canister samples, to -- to -- to -- so  
10 that we could see if there was concern.

11 Q. What were some of the contaminants of concern  
12 that you were looking at?

13 A. We did a Method T015, which measures for 42  
14 different volatile organic compounds. That's a lab  
15 method. Benzene is one of the contaminants that we  
16 looked for in that -- in that method when we did  
17 the canister samples.

18 Q. Were you concerned with benzene?

19 A. Yeah.

20 Q. So you -- you took canister samples. Describe  
21 what canister samples are.

22 A. It's a one-liter stainless steel glass-lined  
23 canister that is evacuated on the negative  
24 pressure. You can open it, and it will suck in  
25 ambient air through an orifice over a period of

1 time so that you can analyze it and get a  
2 concentration in the ambient air.

3 Q. Okay. And ambient air you already mentioned.  
4 That's just -- you just mean the air we breathe?

5 A. Correct.

6 Q. All right. So you took these canister samples.  
7 Did the results -- were there -- were there any  
8 concern when you got the results from those  
9 samples?

10 A. Yes, there was concern.

11 Q. Okay. For what contaminants?

12 A. Benzene.

13 Q. All right. And then you mentioned you prompted  
14 a full-blown study? Why don't you tell the jury  
15 what you meant by a "full-blown study"?

16 A. There was enough concern there to apply to the  
17 EPA for a grant to do a study in the area, and the  
18 EPA granted us funds based on a plan to do this  
19 study.

20 Q. Okay. And what -- why don't you tell the jury  
21 a little bit about the study. How was it set up,  
22 and what was the purpose of the study?

23 A. Part of the study was, you know, to identify  
24 this concern. You know, we had inventory of the  
25 facilities in this area. The sources of benzene of

1 concern were NOCO, Sunoco, and Tonawanda Coke. The  
2 inventory showed that the emissions from Sunoco  
3 were about 400 pounds a year of benzene.

4 MR. PERSONIUS: Your Honor, I object to  
5 getting into the results. I mean, I think it's  
6 clear we're not getting into the results. The  
7 witness knows it.

8 THE COURT: I think you're right. I don't  
9 think we have to go there.

10 MR. MANGO: Yeah, we can abstain. We can  
11 move on from the results.

12 And while we're doing this, your Honor, I would  
13 actually ask that Exhibit 105.07 that's already in  
14 evidence be brought up on the screen.

15 BY MR. MANGO:

16 Q. Okay. So why don't you -- why don't you start  
17 again there. You said you were concerned. And if  
18 you need to point things out -- well, let me just  
19 start in. Were monitoring stations put in place?

20 A. Yes. Part of the plan was to do some ambient  
21 air sampling for a year. We agreed to do a Method  
22 TO15 sample at four different stations, as well as  
23 sample for carbonyl compounds. An example of a  
24 carbonyl compound is formaldehyde and methyl ethyl  
25 ketone.

1           We also did a PM 2.5 sample of particulate  
2           matter less than 2.5 microns in size. That's an  
3           inhalable particle of concern. Size of concern.

4           We did SO2 monitoring and carbon monoxide  
5           monitoring at four stations in this area. I can  
6           identify the locations of the stations?

7           MR. MANGO: Yes.

8           THE COURT: What's SO2? Is that sulfur  
9           dioxide?

10          THE WITNESS: Sulfur dioxide, correct.

11       BY MR. MANGO:

12       Q. Yes. If you can, please, point out with --  
13       again, if you touch the screen it will add a little  
14       arrow where your monitoring locations were.

15       A. Okay. The largest source of benzene is -- is  
16       right here. We had monitoring stations upwind on  
17       Grand Island Boulevard, which, you know, was on --  
18       on the other side here, on Grand Island, excuse me.  
19       That was our upwind monitoring stations at the --  
20       by the golf course where the -- they repair the  
21       golf carts.

22       Q. So across the river?

23       A. Across the river, yeah. Thirty percent of the  
24       time the wind comes from the southwest in this  
25       direction. We had a monitoring station at Grand

1 Island Boulevard right there.

2 We had a monitoring station at the water tower  
3 at the Two Mile Creek Road Golf Course, which is --  
4 which is off this diagram here.

5 Q. Can you put the arrow where it's off the  
6 diagram, please?

7 A. It would be in that direction -- it would be in  
8 that direction there.

9 And then another one in a community on  
10 Brookside terrace Drive. Basically inline with  
11 this -- with this station on Grand Island Boulevard  
12 in that direction.

13 Q. Okay. And, again, what is the prevailing wind  
14 direction in this area?

15 A. Thirty percent of the time the wind is out of  
16 the southwest in this direction.

17 Q. Thirty percent of the time?

18 A. Approximately.

19 Q. Would that be the prevailing --

20 A. Prevailing winds.

21 Q. Okay. So you took samples, then, of air on a  
22 daily basis. How often would samples be taken at  
23 these different locations?

24 A. The TO15 method was via canister. The carbonyl  
25 samples were through cartridges. Those were done

1       once every six days. The T0, the piece of  
2       equipment that measured the PM 2.5 was continuous.

3       Q. Did you get some preliminary results back in  
4       six months in your study?

5       A. Right. We had some preliminary data, you know,  
6       that -- that showed concern for benzene emissions.  
7       We were able to -- we had weather stations at --  
8       at -- at a couple of these monitoring stations so  
9       we can identify when the wind was coming across  
10      Tonawanda Coke. And the data showed concern. You  
11      know, there was enough there to believe that on an  
12      annual basis there may be more emissions than what  
13      was reported in the emissions statements from this  
14      facility.

15      Q. Okay. So this is sometime in -- when did your  
16      full-blown study begin?

17      A. It began in July of 2007 and ended in July  
18      of 2008.

19      Q. Okay. So by May of 2008?

20      A. In May we had some preliminary data that gave  
21      us this indication. We had a conversation with the  
22      RAPCE, Larry Sitzman at the time, and felt it was a  
23      good idea to present this data to Tonawanda Coke  
24      and see if we can find -- you know, find -- find  
25      some of the sources, find some reductions to

1 minimize the emissions.

2 Q. Okay. Now, so in May of 2008 is when your  
3 preliminary results came in?

4 A. Correct.

5 Q. And they showed elevated levels of benzene?

6 A. Correct.

7 Q. And at that time, are you testifying that you  
8 believed that elevated level of benzene was coming  
9 from Tonawanda Coke Corporation?

10 A. Yeah.

11 Q. All right. Now, had you been to the Tonawanda  
12 Coke Corporation prior to this?

13 A. No.

14 Q. Before May of 2008?

15 A. No.

16 Q. Okay. And you mentioned there was a discussion  
17 between you and Larry Sitzman.

18 A. Yes.

19 Q. What did you guys decide to do?

20 A. We decided to go visit Tonawanda Coke, Mark  
21 Kamholz, and show him the data, and -- and discuss  
22 it with him.

23 Q. Okay. And you did that?

24 A. And we did that on May 28th, I believe, 2008.

25 Q. So May 28th, 2008, you go --



1 A. Myself, Larry Sitzman, Cheryl Webster, and Gary  
2 Foersch met with Mark Kamholz.

3 Q. Okay. And when -- take us through the -- the  
4 jury through the process. When you first got to  
5 the site, what did you have to do to get in and who  
6 did you meet with?

7 A. You go to a guard gate. You announce that  
8 you're there to visit Mark Kamholz, and they call  
9 Mark and direct you to the -- where to meet him in  
10 his -- in the offices.

11 Q. Okay.

12 A. So we met with Mark. You know, I discussed  
13 similar to what I just did here for you. I showed  
14 him a -- a graph that had particular days where the  
15 winds were coming from the southwest across the  
16 plant that indicated, you know, benzene levels of  
17 concern. And -- and I asked him for some input as  
18 to, you know, what he thought may be contributing  
19 to this. You know, basically we wanted to have,  
20 you know, an opportunity to discuss it with him, so  
21 that he could help us find -- find -- find the  
22 source of -- if there was one, that -- that was of  
23 concern and get reductions.

24 Q. Okay.

25 THE COURT: Before you go on, tap the

1 exhibit in terms of where the gate is and where the  
2 offices are.

3 MR. MANGO: In fact, your Honor, if we  
4 could zoom in to this portion, that may help us in  
5 doing this, your Honor.

6 THE COURT: Okay.

7 THE WITNESS: This is the entrance to  
8 Tonawanda Coke. Gate house should be right here.  
9 It's hard to see.

10 THE COURT: That's the gate?

11 THE WITNESS: There is a gate here and a  
12 gate house with an officer who is at that box.

13 THE COURT: Okay. Where are the offices?

14 THE WITNESS: This is the office here.

15 THE COURT: So you went from the gate area  
16 away from the Coke ovens and all that stuff to the  
17 offices?

18 THE WITNESS: Correct.

19 THE COURT: Okay.

20 MR. MANGO: So, again, tell the jury how  
21 was your interaction with Defendant Kamholz during  
22 this -- this meeting in his office?

23 MR. PERSONIUS: Your Honor, I object to  
24 that question. How was his interaction? Object to  
25 it.

1 THE COURT: To the form, I'll sustain it.

2 Rephrase it.

3 BY MR. MANGO:

4 Q. Describe your interaction with Defendant  
5 Kamholz during your meeting in his office.

6 A. Well, I presented the data, like I said, and,  
7 you know, basically we were there just to see if we  
8 can work together to figure something out to kind  
9 of take a look at the by-products plant, you know,  
10 together. Hopefully -- you know, hopefully with  
11 our input and Mark's, we can see if we can learn  
12 something about the facility, about that side of  
13 the plant, or -- or the battery to find -- to find  
14 reductions. That's all we were after.

15 And, you know, I gave my little speal and Mark  
16 was -- is relatively quiet, you know, when I asked  
17 him, you know, can you think of anything that  
18 contributes to these sources. You know, he had  
19 nothing to add. So I asked that, you know, can we  
20 take a quick tour of the by-products plant. You  
21 know, we couldn't stay very long. We wanted to  
22 be -- so we took a tour. He gave us a -- we  
23 walked -- I think we may have drove towards the  
24 battery and parked in this area here and then  
25 walked down the alley between the coke ovens and

1 the by-products area. And I was just basically  
2 asking questions about the different sources there  
3 to see if we can, you know, identify some benzene  
4 emissions.

5 Q. Let's be very clear. You were -- you were  
6 telling him you were concerned about benzene?

7 A. Yes.

8 Q. And when you asked him what you just said, do  
9 you have any ideas or any suggestions, how did he  
10 answer that question?

11 A. He did not have any -- any input. You know,  
12 there was no -- no information that I recall that  
13 he gave back. It was a shrug of a shoulder or  
14 something like that.

15 Q. Okay. So at some point, then, you all leave.  
16 Did you -- did you follow him, or did you ride  
17 together, if you can recall?

18 A. I don't recall if we drove in separate cars to  
19 that spot or if we took a van.

20 Q. Okay. And so now you get into the production  
21 facilities here?

22 A. We basically started on the other side of this  
23 where this steam plume is. That's the alleyway  
24 there that goes between the -- the battery and the  
25 by-products plant.

1 Q. All right.

2 MR. MANGO: If you can -- actually, I'd  
3 like to, your Honor, at this point pull up  
4 Government Exhibit 105.23, which is part of the  
5 stipulation that was received into evidence  
6 yesterday as being taken on April 21st, 2007, an  
7 aerial photograph. If we can focus on this  
8 portion.

9 And I ask that that be entered into evidence  
10 now formally subject to an -- an objection.

11 THE COURT: No objection?

12 MR. LINSIN: No objection.

13 MR. PERSONIUS: No objection, your Honor.

14 THE COURT: All right. 105.23 received.  
15 No objection.

16 (Government's Exhibit 105.23 was received  
17 into evidence.)

18 MR. MANGO: Your Honor, if I may have a  
19 moment.

20 THE COURT: Sure.

21 MR. MANGO: I'd also like to offer into  
22 evidence, your Honor, 105.48, and ask that that be  
23 brought up on the screen, actually. Which was  
24 stipulated to --

25 MR. LINSIN: No objection, your Honor.

1 MR. PERSONIUS: No objection, your Honor.

2 THE COURT: Okay. 105.48 received.

3 (Government's Exhibit 105.48 was received  
4 into evidence.)

5 MR. MANGO: Which was subject to  
6 stipulation as being taken April 21, 2007. I ask  
7 that that be published to the jury, your Honor, and  
8 be focused like that.

9 THE COURT: Sure. You may publish.

10 MR. MANGO: Thank you, your Honor.

11 Okay. And related to that is Government  
12 Exhibit 305.48, which was subject to the  
13 stipulation and is an enlarged aerial photograph of  
14 what is on the screen. I'd ask that that be put up  
15 on the easel, your Honor, and be formally admitted  
16 into evidence. 305.48.

17 THE COURT: Thank you. I'm just looking  
18 for that exhibit list.

19 MR. PERSONIUS: Your Honor, I apologize.  
20 I'm losing track of exhibit numbers. Could we have  
21 the number for this exhibit and for the previous  
22 exhibit?

23 THE COURT: Yeah. This is 305.48.

24 MR. PERSONIUS: Okay. And the one before  
25 this, please?

1 THE CLERK: On the screen is 105.48,  
2 right?

3 MR. MANGO: Yes, on the screen is 105.48.  
4 This cropped version is identical, your Honor, to  
5 305.48.

6 MR. PERSONIUS: Thank you, your Honor.

7 THE COURT: There's no objection?

8 MR. LINSIN: No objection.

9 MR. PERSONIUS: No objection.

10 THE COURT: All right. 305.48 received as  
11 well. No objection.

12 (Government's Exhibit 305.48 was received  
13 into evidence.)

14 MR. MANGO: Thank you, your Honor.

15 BY MR. MANGO:

16 Q. Okay. Mr. Carlacci, can you now, looking at  
17 the screen, point out where you started. You  
18 mentioned you went through a walk-through of the  
19 by-products unit.

20 A. Right. We -- we parked not too far from this  
21 location right here, and walked down this driveway  
22 to the by-products plant.

23 Q. Which driveway? It's not coming up. Okay.

24 A. This is the driveway. The arrows are basically  
25 pointing to the north side of this plant that is

1 the by-products area of the plant.

2 Q. Okay. What's this item right there that I just  
3 put a mark on?

4 A. That's the battery. The 60 ovens make up a  
5 battery.

6 Q. Okay. So where your two arrows are, that's the  
7 by-products unit?

8 A. Right. That area -- in that general area  
9 there.

10 Q. Okay. Tell the jury what you did during your  
11 walk-through.

12 A. All right. We started down here, and I had  
13 concern with this -- this first building right here  
14 because this is the ammonia still, where the liquor  
15 that's used to flush out the mains, the coke oven  
16 mains, the mains that collect the coke oven gas  
17 collecting contaminants as well as the ammonia from  
18 the ammonia scrubbers is sparked. And basically  
19 they boil it so all the contaminants evaporate into  
20 the atmosphere. Approximately 400 tons of ammonia  
21 that comes out of that stack as well as  
22 4,000 pounds of benzene. Approximately 3- to 4,000  
23 pounds of cyanide.

24 The ammonia I felt was causing the complaints  
25 that we were getting, some of the complaints we



1       were getting relative to throat irritation and eye  
2       irritation. I expressed my opinion that that  
3       should be controlled.

4               We talked a little bit about some of the tanks  
5       that are in this area here. Nothing significant  
6       sticks to mind here other than, you know, there was  
7       a lot of steam leaks. Tanks are contained in  
8       dykes, so that if there's a spill, the material's  
9       contained in that dyked area. There was a lot of  
10      water, oily water in those dyked areas.

11      Q. Before you go on, let me ask questions here.  
12      The ammonia still area that you talked about, you  
13      said you raised this concern with Defendant  
14      Kamholz?

15      A. Yes, I did.

16      Q. How did he respond to you?

17      A. No comment.

18      Q. Okay. Keep going, please.

19      A. Most of the -- the structures here, you know,  
20      are in pretty rough shape. This is an old  
21      facility. Lot of corrosion, you know, in rough  
22      shape. You know, walking down the alley here then,  
23      you know, we're kind of going through the  
24      by-products plant backwards, right? More starting  
25      from the end of the process.

1           In this -- in this area I believe he identified  
2       these -- these green tanks here as the light oil  
3       storage tanks that -- the light oil used in the LBA  
4       scrubber to remove BTX, benzene, toluene, xylene.  
5       And there is a truck loading station right here,  
6       right adjacent to that line, where the benzene is  
7       loaded into a truck and sold. If you were a major  
8       source of HAPs, the NESHAP that we discussed in one  
9       of the previous letters would require that you  
10      control emissions from these tanks, as well as that  
11      loading station. They justified being minor in  
12      that letter, I think, of 2003 or '4.

13           When you look at the -- there was no control on  
14      the vent, therefore -- and the loading rack was a  
15      splash fill system, in that a tanker truck would  
16      pull up and there was a line, you know, three-,  
17      four-inch pipe that just loaded this oil in -- into  
18      this truck from the porthole on top. Many of our  
19      regs are volatile organic compounds, you know,  
20      require submerged fill as a minimal method of -- of  
21      reducing re-volatilizing of a solvent or a  
22      volatile. And I suggested that they put an  
23      extension on this unit, so that it would be  
24      submerged fill, less splashing of the liquid as you  
25      load the truck, less volatilizing of -- of the

1 chemicals that are in this oil.

2 Some minor reductions are possible from that.  
3 You know, we didn't talk about how much that would  
4 be. In the scheme of things that's not a large  
5 source compared to the whole facility, but, you  
6 know, we're just walking through the place trying  
7 to find anything we could that may help reduce  
8 emissions.

9 Q. So did you mention this splash fill versus a  
10 submerged fill to Defendant Kamholz?

11 A. Yes, I did. And Mark didn't feel that was a  
12 big deal, that that was easily done. It's not an  
13 expensive thing to do.

14 Q. Okay.

15 A. I believe they did that. And at the end, this  
16 whole process was eliminated of washing BTX from  
17 the coke oven gas.

18 Q. The light oil system?

19 A. The light oil system.

20 Q. Okay. You're saying it was taken out of  
21 service sometime after your -- your inspection?

22 A. Correct.

23 Q. All right. I'm going to take away some of  
24 these. If you can, just start again. So how -- so  
25 you ended up at the light oil storage tanks, that

1 was --

2 A. Those were the light oil storage tanks.

3 Q. Where did you go after that?

4 A. We were in front of the LBA, the actual  
5 scrubber where oil is put in to contact the coke  
6 oven gas and remove the benzene, toluene, xylene  
7 from the coke oven gas to be sold as a by-product.

8 Q. Okay. While you're walking in this area,  
9 how -- how were you all walking? In what sort of  
10 pattern?

11 A. Normally you would expect a plant manager to  
12 walk ahead of you to give you, you know, the tour.  
13 They know the plant better than anyone, and you're  
14 hoping that they interact with you, give you a good  
15 description of what you're looking at. And, you  
16 know, that wasn't quite the case here. You know,  
17 Mark was a little reluctant to -- to -- you know,  
18 just -- just to take off and -- and describe  
19 things. I had to -- particularly ask what's that  
20 tank, what's this here, what's that there.

21 So as -- you know, as we progressed, you know,  
22 I mean, I'm walking in front of Mark, and we were  
23 going down somewhere during this -- this part of  
24 this walk, Mark has a half face mask.

25 MR. PERSONIUS: Your Honor, this is the

1 area that I talked about that I think is  
2 irrelevant.

3 THE COURT: All right. I'm going to  
4 overrule the objection.

5 MR. MANGO: Go ahead.

6 THE WITNESS: So a half face mask filters  
7 out the contaminants that you breathe in. It  
8 covers your nose, your mouth. It has carbon  
9 cartridges that -- you know, I'm assuming it had  
10 carbon cartridges on there that filter out volatile  
11 organic compounds.

12 MR. PERSONIUS: Your Honor, I object to  
13 the witness assuming anything.

14 THE COURT: Yeah. I'll sustain that  
15 objection. Let's move on. We have got the  
16 description what he was wearing.

17 MR. MANGO: No, your Honor, I don't think  
18 he said he was wearing it.

19 BY MR. MANGO:

20 Q. If you can --

21 A. He wasn't wearing it, but he had it around his  
22 neck as we were walking, and I'm asking questions  
23 and talking to Larry and Cheryl. And, you know,  
24 they know the facility more than I do. They are  
25 feeding me information as well.

1 I turned once and I saw Mark with a face mask  
2 up on his -- on his face. You know, it was hanging  
3 here. You know, it wasn't only tied with one  
4 string. He held it up and pulled it down. It just  
5 gave me concern. Typically an environmental  
6 engineer will let you know if there's a safety  
7 issue that you need protective equipment in an  
8 area. Made me just extra concerned about where I'm  
9 walking. And in this area it smelled like coke  
10 oven gas. It was a strong -- a strong odor.

11 And, again, as I mentioned, the equipment is  
12 in -- you know, looks like it's in disrepair. It's  
13 old. It's rusty. You see, you know, stains in  
14 areas that look rusty, you know, that -- indicating  
15 there could be leaks in that area. The overhead  
16 piping here that's, you know, painted red, you  
17 know, was not red during my inspection. It was  
18 rusty stained piping. You know, at every joint,  
19 flange, valve, elbow, you could see, you know,  
20 staining that indicate possibly some kind of  
21 leakage, right?

22 So I'm commenting on the condition of the -- of  
23 this -- of the tanks. It's difficult to identify,  
24 you know, what tanks are in service and which ones  
25 are not.

1           Next to the light oil scrubber there were two  
2           other tall tanks --

3           MR. PERSONIUS: Your Honor, this -- this  
4           is going on and on and on. The question -- I'd ask  
5           that all the testimony be stricken. Maybe it's too  
6           late, but he's just going to keep going.

7           THE COURT: Yeah. It is too late. I'm  
8           going to stop it right there. Let's -- the  
9           narrative should be eliminated. Let's see what you  
10          want to do with questions.

11          MR. MANGO: I'll refocus. Yes, your  
12          Honor.

13          So as you're -- as you're walking in that area,  
14          you see him hold -- hold the mask up, he sees you,  
15          he puts it down.

16          MR. PERSONIUS: Your Honor, now we have  
17          got Mr. Mango retestifying about the evidence we  
18          have already heard. I object to that.

19          THE COURT: You don't have to do that.  
20          Let's move on with the questions.

21          MR. MANGO: Yes, your Honor.

22          BY MR. MANGO:

23          Q. You mentioned -- you were talking about this  
24          light oil scrubber. Let's go there. Did you --  
25          did you observe the light oil scrubber?

1 A. Yeah. I asked -- I asked Mark -- Mark to  
2 describe how this light oil scrubber works, you  
3 know. And I'm looking at it again. It's, you  
4 know, the same type of disrepair looking old piece  
5 of equipment.

6 MR. PERSONIUS: Again, your Honor, he's  
7 not answering the question.

8 THE COURT: Yeah, it's a more narrative  
9 response. Let's tailor it in, please.

10 MR. MANGO: Okay.

11 THE COURT: Sustained.

12 BY MR. MANGO:

13 Q. Okay. You saw the light oil scrubber. Your --  
14 the inspection party ended up at the light oil  
15 scrubber?

16 A. Right.

17 Q. You saw it. What was your concerns with the  
18 light oil scrubber?

19 A. My concerns were there were leaks there. I  
20 asked Mark, you know, on the -- on the exhauster,  
21 you do monitoring with a piece of equipment to  
22 determine if there is VOC leaks. It's a  
23 requirement of the one of the NESHAP regs. I asked  
24 if he ever used that piece of equipment on this  
25 side of the plant, the positive side, the



1 by-products side of the plant to see if there was  
2 any leaks to aid us in finding sources that maybe  
3 we can eliminate.

4 Q. And what --

5 A. And his answer was no.

6 Q. He said he had never done detection?

7 A. Never done that. I asked him if he -- you  
8 know, the light oil scrubber, again, looking in --  
9 in rough shape, I asked if he ever went to the top  
10 of this unit to see if it was perforated up on top  
11 of the tank. He said, "No, and I'll never go up  
12 there." So that was pretty much the end of our  
13 tour. We left.

14 Q. Okay. When you were there in March -- or I'm  
15 sorry -- May 28th of 2008, did you see what you now  
16 know termed the bleeder valve or the pressure  
17 release valve?

18 A. I didn't see it on that day.

19 Q. Okay. During a later inspection did you see  
20 it.

21 A. Yes. Sometime in, I believe, early 2011 I was  
22 there when the light oil scrubber tank was being  
23 decommissioned with an inspection with Tom Ferraro  
24 to see how that procedure was going.

25 MR. MANGO: Your Honor, at this point I'd

1       like to show the witness Government  
2       Exhibit 15.02.097 for identification purposes.

3           And absent an objection, I would move this into  
4       evidence.

5           THE COURT:   Okay.   15.020.097.   Any  
6       objection?

7           MR. LINSIN:   No objection.

8           MR. PERSONIUS:   No objection, your Honor.

9           THE COURT:   Okay.   No objection.  
10       Received.

11           (Government's Exhibit 15.020.097 was  
12       received into evidence.)

13           MR. MANGO:   I ask that this be published  
14       to the jury.   Thank you.

15       BY MR. MANGO:

16       Q.   Okay.   What are we looking at here, Mr.  
17       Carlacci?

18       A.   From descriptions of others and that one visit  
19       that I had there, that is the bleeder valve.   When  
20       I was there, I can't recall if the stack was there,  
21       but I remember Tom Ferraro with Conestoga-Rovers  
22       Association telling me that there was a --

23           MR. PERSONIUS:   Your Honor, I object to  
24       what this gentleman said.   That's hearsay.

25           THE COURT:   Yeah, sustained.

1 MR. LINSIN: Your Honor, could we ask the  
2 witness to identify which component in this  
3 photograph he's referring to as the PRV?

4 THE COURT: That's why I had it brought  
5 down, so we could do that.

6 MR. LINSIN: Thank you.

7 THE COURT: Thank you. All right.  
8 Redirect your questions, please.

9 BY MR. MANGO:

10 Q. Yes. Mr. Carlacci, can you -- can you point  
11 to -- put a dot on what we're looking at as the  
12 pressure release valve, bleeder valve?

13 A. That is the valve.

14 Q. Okay. And then there is the stack above it  
15 there that relates to the valve?

16 A. That is the stack installed to allow the  
17 contaminants to rise away from the ground.

18 Q. Okay. Can you describe the circumstances by  
19 which you physically saw this?

20 A. At the 2011 inspection I asked Tom Ferraro with  
21 Conestoga-Rovers Association to point it out to me,  
22 and he pointed it out to me.

23 Q. Okay. Did you learn on that day in 2011  
24 whether this was still operational?

25 A. Yeah. I recall now that he told me there was

1 a -- a blind -- a flange installed --

2 MR. PERSONIUS: Your Honor, again, this is  
3 hearsay, what he's being told.

4 MR. MANGO: Your Honor, I'll ask it  
5 different.

6 Did you learn whether this was in service --  
7 not what somebody told you. Did you learn whether  
8 this was in service or not?

9 MR. LINSIN: That -- your Honor, I would  
10 join the objection. That is precisely what someone  
11 would have told him.

12 MR. MANGO: Your Honor, I think the record  
13 needs to be clear that in 2011 this was not  
14 operating and he saw that.

15 MR. LINSIN: Objection, your Honor.

16 THE COURT: Well, I think that's a  
17 different story. But, start again. I'll sustain  
18 the objection at this point.

19 MR. MANGO: Okay. Did you learn in 2011  
20 whether this was operating?

21 THE WITNESS: Yes.

22 MR. LINSIN: I renew my objection, your  
23 Honor.

24 THE COURT: All right. The question is  
25 whether or not he learned if this was

1 operational --

2 MR. MANGO: Yes.

3 THE COURT: -- not what he observed?

4 MR. MANGO: Right.

5 THE COURT: But as a product of an  
6 investigation?

7 MR. MANGO: Just whether you learned --  
8 yes, on his inspection in 2011 whether this was  
9 operational. If he learned that, yes or no?

10 THE COURT: All right. At what time?

11 MR. MANGO: During his 2011 inspection.  
12 Which is, again -- this is well after the  
13 indictment, so --

14 THE COURT: Well, I mean you have to put  
15 it in a proper question. As to the form of the  
16 question, I'm going to sustain the objection.

17 BY MR. MANGO:

18 Q. Were you there in 2011 at the Tonawanda Coke  
19 Corporation?

20 A. Yes.

21 Q. And is that when you observed this bleeder  
22 valve?

23 A. Yes.

24 Q. Did you hear it discharge while you were there?

25 A. No.

1 Q. Do you know if it was in operation at the time?

2 MR. LINSIN: Objection.

3 THE COURT: I'll allow that. Overruled.

4 THE WITNESS: I was told it was not.

5 MR. PERSONIUS: Doesn't matter. It's all  
6 right.

7 BY MR. MANGO:

8 Q. So after -- if we could -- after you discussed  
9 with Mr. Kamholz in front of the light oil scrubber  
10 whether he had gone up there -- now we're back in  
11 May 28th of 2008. Whether he had ever gone up  
12 there to check -- you asked him whether he checked  
13 the top of this structure?

14 MR. PERSONIUS: Your Honor, he's already  
15 testified to this. Now he wants to go back over it  
16 again. He's already testified to this subject.

17 THE COURT: Well, I mean, I think he's  
18 setting the stage. You're going somewhere else,  
19 right?

20 MR. MANGO: Yes.

21 THE COURT: I'm going to allow it just to  
22 set the stage. And let's move on.

23 MR. MANGO: Okay.

24 BY MR. MANGO:

25 Q. You had discussed the light oil scrubber with

1 him?

2 A. Yes.

3 Q. Then you mentioned after that your inspection  
4 ended?

5 A. Correct.

6 Q. Okay. So you left the plant at that point?

7 A. Yes.

8 Q. Did you have any conversations with Mark  
9 Kamholz before you left the plant?

10 A. No.

11 Q. Okay. During that inspection when you raised  
12 this benzene concern and showed -- you showed him  
13 physical results?

14 A. Yes.

15 Q. And you showed him physical results.

16 A. Yes.

17 Q. Did he ever tell you that he had a pressure  
18 release valve or bleeder valve operating in the  
19 by-products unit?

20 A. No.

21 MR. MANGO: Your Honor, if I may have a  
22 moment.

23 Just a few questions, your Honor.

24 Mr. Carlacci, the charges in the indictment  
25 range from 2005 to 2009. Did you conduct any

1 further inspections during that time period  
2 yourself?

3 THE WITNESS: No.

4 MR. MANGO: Thank you, your Honor.  
5 Nothing further for this witness.

6 THE COURT: Okay. Let's take a break  
7 until about 3:30 or so, ladies and gentlemen.

8 (Jury excused from the courtroom.)

9 THE COURT: Okay. With respect to  
10 objections, it gets a little difficult to handle if  
11 I don't know what the theory of your objection is.  
12 Because certain conversations can get -- can be  
13 gotten into without being hearsay depending on how  
14 they are offered. If it's to establish the  
15 functionality, the truth of the matter asserted,  
16 okay, that's a different story. But we have  
17 issues -- since Mr. Kamholz is the defendant here,  
18 it could be an admission against interest. It can  
19 be a statement that's an exception to the hearsay  
20 rule with respect to the authority to make  
21 statements on behalf of the corporate defendants.  
22 So we've got -- you know, those are all the things,  
23 you know, that I have to consider. So unless we're  
24 a little bit more specific, it's -- it's harder for  
25 me to deal with it. Give that some thought.



1 I know, Mr. Linsin, you wanted to say  
2 something.

3 MR. LINSIN: Your Honor, we will certainly  
4 give it some thought.

5 As I understood the proffered testimony, it  
6 related to a conversation this witness had with a  
7 third-party consultant, not an employee of the  
8 company. This was not an admission of a party  
9 opponent, as I understand the basis for the  
10 witness's testimony. That's why I objected on the  
11 basis of hearsay.

12 THE COURT: Okay. All right. I mean,  
13 that's helpful. I mean, if it's not an employee of  
14 the corporation, that's another matter. And, you  
15 know, if I missed that, so that we don't go astray,  
16 let me know. Okay?

17 MR. LINSIN: I apologize, your Honor, I  
18 should have been more -- more complete in my  
19 objection.

20 MR. MANGO: Likewise, your Honor, because  
21 that actually was a third-party consultant hired by  
22 Tonawanda Coke Corporation. So if I would have  
23 articulated it properly, I would have argued that  
24 it was an agent of the Tonawanda Coke Corporation.

25 THE COURT: You probably would have lost

1 in that argument, though, Mr. Mango. I don't know.  
2 I don't know, but that would help me just a little  
3 bit in that kind of a context. Okay?

4 MR. MANGO: Yes, your Honor.

5 THE COURT: Thank you very much.

6 (Short recess was taken.)

7 (Jury seated.)

8 THE COURT: Thank you. Please have a  
9 seat. We're resumed in the case of Tonawanda Coke  
10 versus Kamholz. And the attorneys and parties are  
11 back, present. The ladies and gentlemen of the  
12 jury are here. Role call waived.

13 And cross-examination I think is next.

14 Mr. Carlacci, if you would take the stand  
15 please. And who's going to open the cross?

16 MR. LINSIN: I will, your Honor.

17 THE COURT: All right, Mr. Linsin. Thank  
18 you.

19 MR. LINSIN: May I proceed, your Honor?

20 THE COURT: You may.

21 CROSS-EXAMINATION BY MR. LINSIN:

22 Q. Good afternoon, Mr. Carlacci.

23 A. Good afternoon.

24 Q. My name is Greg Linsin and I represent  
25 Tonawanda Coke. You testified on direct

1 examination about Government's Exhibit Number 131,  
2 which has been admitted into evidence.

3 Could we call up, 131, please? Do you recall  
4 that testimony, sir?

5 A. Yes.

6 Q. All right. And could we please move to the  
7 third page of this document. When was the first  
8 time you saw this document, Mr. Carlacci?

9 A. I've seen it in the files, I think, prior --  
10 no. Prior -- you know, 2007, '8. I can't say  
11 exactly when, but I have -- I've looked at it a  
12 couple of times.

13 Q. Did you see this document before you went out  
14 to Tonawanda Coke plant in May of 2008?

15 A. Yes.

16 Q. All right. So that was part of your document  
17 review in order to prepare yourself for the site  
18 visit in May of 2008, is that right?

19 A. It wasn't in preparation for that site visit,  
20 but I looked at it for other reasons.

21 Q. What -- what reasons did you look at it?

22 A. To determine applicabilities of the NESHAPs,  
23 Subpart L.

24 Q. And your testimony regarding this document --  
25 if we can move to what is at the bottom marked 4.2

1 in this document, please. I'm sorry, 4-2. And if  
2 we can enlarge the bottom third of the page,  
3 please.

4 Now, you recall your testimony on direct about  
5 this information concerning pressure relief valve  
6 in the by-products area at Tonawanda Coke, is that  
7 right?

8 A. Yes.

9 Q. And do you know what the calculation factor or  
10 the emission factor that was used for this study  
11 related to?

12 Go to the larger view of this page, please. At  
13 the top of the fourth column, it says "Emissions  
14 Factor."

15 A. Right. There is an emission factor with the  
16 units.

17 Q. And my question, sir, is: Do you know what  
18 that emissions factor is?

19 A. The emission factor is for a measurement of  
20 HAPs per hour at this -- at this source in  
21 question.

22 Q. And is that measurement during normal  
23 operations, or is it measurement for leakage from  
24 the components that are listed here? Do you know  
25 what that is a measurement of?

1 A. I'd have to look at the calculation, if there  
2 was supporting calculations, to give you a precise  
3 answer.

4 Q. So am I understanding your testimony now to be  
5 that you're not sure if this was a calculation of  
6 potential leakage from these components for the  
7 purposes of the NESHAPs emission report?

8 A. The -- the report, yes, is based on an estimate  
9 of emissions from the facility to determine  
10 applicability of Subpart L.

11 Q. Yes. My question, though, goes to whether it  
12 is measuring -- whether this emissions factor that  
13 is used here to develop the calculations, whether  
14 that emissions factor is an industry factor of  
15 leakage from the components listed in this  
16 document.

17 A. Again, I have to read that reference to give  
18 you a precise answer.

19 Q. When you say "that reference," what reference  
20 are you identifying, sir?

21 A. In here it references where this emission  
22 factor came from.

23 Q. All right. So as you sit here right now,  
24 you're not sure, is that correct?

25 A. Correct.

1 Q. All right. There is no debate, is there, that  
2 in July -- on July 11th, 2003, Tonawanda and Mark  
3 Kamholz notified DEC and, thereafter, EPA that  
4 there was a pressure relief valve located in the  
5 by-products plant at this facility on the coke oven  
6 gas system, is there?

7 A. This is not a notification; it's a summary of  
8 emissions.

9 Q. And in that summary of emissions, they have  
10 told DEC -- the company and Mr. Kamholz have told  
11 the DEC -- there is a pressure relief valve on that  
12 coke oven gas line, right?

13 A. This is not telling. I think part 201 tells  
14 you that you have to submit a permit for a new  
15 source or a source that you didn't discover, and  
16 that's not the same.

17 Q. This document says there's a pressure relief  
18 valve in the by-products area on the coke oven gas  
19 line, doesn't it, sir?

20 A. It references an emissions from a pressure  
21 relief valve in the coke oven gas system.

22 Q. In the by-products area, correct?

23 A. In the by-products area.

24 Q. And that communication was sent to DEC, wasn't  
25 it?

1 A. Yes.

2 Q. All right. And after that, this analysis that  
3 was done by a third party was sent by DEC to EPA  
4 down in North Carolina for evaluation, wasn't it?

5 A. Correct.

6 Q. All right. So this information that we're  
7 referring to on this page was provided to DEC on  
8 July 11th of 2003 --

9 A. Correct.

10 Q. -- correct?

11 Okay. Do you know what the standard operating  
12 pressure is for the coke oven gas line at the  
13 Tonawanda Coke facility?

14 A. No, I do not.

15 Q. All right. You provided a number of answers to  
16 hypothetical questions on direct examination  
17 concerning rates of leakage from a -- a valve.

18 Do you recall those responses?

19 A. Yes.

20 Q. What -- in offering those responses and giving  
21 those opinions, what pressure were you assuming to  
22 be behind the valve in those hypotheticals?

23 A. My concern was not the pressure. If it's -- if  
24 it's using to emit a contaminant, then my point is  
25 it requires a permit and an evaluation.

1 Q. You -- you provided responses to a number of  
2 hypotheticals indicating that, as I recall your  
3 testimony, sir, that if a valve released every 20  
4 or 30 minutes over a year's period of time, even in  
5 regard to this document, you testified that you  
6 thought that the quantity estimated here would be  
7 approximately consistent with the valve operating  
8 on that basis. Isn't that what you testified to?

9 A. You just confused me with whatever you said  
10 there.

11 Q. All right. In response to questions on direct  
12 examination, do you remember being asked a  
13 hypothetical regarding this particular calculation  
14 here?

15 A. Right.

16 Q. About the estimated emissions from this  
17 pressure relief valve, .0030?

18 A. Yes.

19 Q. And do you recall telling Mr. Mango that you  
20 thought that that estimated annual emissions was  
21 roughly consistent with a valve that released every  
22 20 or 30 minutes for a duration of 15 or 30  
23 seconds?

24 A. I don't recall that.

25 Q. You don't recall that testimony? Is it



1 possible to estimate the quantity of gas released  
2 from a line without knowing the pressure in that  
3 line?

4 A. No. The more information you have, the more  
5 exact you can come up with a number.

6 Q. Do you know whether the gas line, the coke oven  
7 gas line at Tonawanda, is a high-pressure line or  
8 low-pressure line?

9 A. Not off the top of my head.

10 Q. Would it surprise you to know that the pressure  
11 at the coke oven gas -- in the coke oven gas line  
12 at Tonawanda, it's standard operating pressure, is  
13 something roughly equivalent to one to one and a  
14 half pounds per square inch?

15 A. Wouldn't surprise me.

16 Q. And would you agree with me that is a  
17 relatively low pressure line?

18 A. You could say that.

19 Q. Compared, for example, to a -- a car tire that  
20 typically has 36, 38 pounds per square inch.

21 A. Yes.

22 Q. Could we, please, have Government  
23 Exhibits 19.01, which has been admitted into  
24 evidence. And could we look at the second page of  
25 this exhibit, please.

1           Do you recall seeing this letter and flow  
2       diagram during your testimony yesterday,  
3       Mr. Carlacci?

4       A.   Yes, I do.

5       Q.   And do you recall it as being a flow diagram  
6       submitted in 1981 to DEC?

7       A.   Correct.

8       Q.   And do you recall testifying yesterday that you  
9       had reviewed the file in this case, the Clean Air  
10      Act file in this case, and that you did not recall  
11      any additional gas flow diagrams submitted by  
12      Tonawanda in that file?

13      A.   I recall saying that. I recall saying that I  
14      didn't see any diagrams similar to this schematic.  
15      There's not much detail in this diagram.

16      Q.   In fact, during your testimony today --  
17      actually, one time yesterday and again today --  
18      there were at least two additional gas flow  
19      diagrams submitted by Tonawanda to DEC, weren't  
20      there?

21      A.   Yes.

22      Q.   You testified yesterday that you had, prior to  
23      assuming your current responsibilities, inspected a  
24      number of coke oven gas facilities, is that  
25      correct?

1 A. Correct.

2 Q. Can you tell us, please, how many times  
3 approximately you had been out on a field  
4 inspection for a coke oven gas facility?

5 A. I believe it was maybe a total of ten to 15  
6 times and it was a long time ago. I don't recall  
7 the exact number, but I recall going to Donner  
8 Hanna Coke at least once, maybe twice, and  
9 Bethlehem Steel several times.

10 Q. And when did those inspections occur?

11 A. Early '80s.

12 Q. And when a department of air resources --  
13 Division of Air Resources inspector goes out to a  
14 facility for a compliance inspection, what is the  
15 purpose of that inspection?

16 A. To determine compliance with the permit and  
17 applicable regulations.

18 Q. That exist at that time, is that correct?

19 A. Correct.

20 Q. And would you agree with me, Mr. Carlacci, that  
21 between -- from the time period we're talking  
22 about, say, from the date of this letter, 1981, up  
23 until 2009, 2010, there have been some very  
24 significant changes in the laws and regulations  
25 that govern air emissions from industrial

1 facilities, both in the state of New York and  
2 federally?

3 A. I agree.

4 Q. It has been, hasn't it, the -- the time during  
5 which our nation's Clean Air Act has developed from  
6 a very rudimentary statute to a very -- a far more  
7 complicated statute and -- and with higher  
8 permitting requirements, is that correct?

9 A. That's correct.

10 Q. And, similarly, during that period, New York  
11 State's regulations have changed over time and  
12 adjusted requirements, exemptions, and the range of  
13 obligations that apply to facilities that are  
14 required to be permitted, isn't that correct?

15 A. That's correct.

16 Q. Now, when an inspector goes out to a facility  
17 to determine compliance with a permit, if an  
18 inspector identifies a violation of a permit while  
19 he or she is on the facility, have inspectors been  
20 trained in terms of what they should do to address  
21 that concern with the operator or to notify the  
22 operator that there is a violation?

23 A. Yes, they have.

24 Q. And isn't it true that the -- since the purpose  
25 is to achieve compliance -- that the training

1 inspectors receive and the whole purpose of these  
2 compliance inspections is to notify the facility if  
3 there is a violation that is understood and to work  
4 with the facility to get it corrected?

5 A. Yes.

6 Q. And part of the process of achieving that  
7 objective, typically in an inspection, is a  
8 close-out meeting with the personnel from the  
9 facility that you're inspecting, to kind of review  
10 your findings and discuss issues of significance or  
11 concern to the inspector. Isn't that a typical  
12 component of a compliance inspection?

13 A. Typically.

14 Q. By the way, did you keep any notes of your  
15 visit to Tonawanda Coke on May 28th, 2008?

16 A. I -- I did have the -- the sheet and some notes  
17 that I scratched on the back, yes.

18 Q. Did you file a report of that visit?

19 A. No.

20 Q. And going back to the general protocol for a  
21 compliance inspection, if an inspector, an air  
22 inspector, determines there is a violation, and  
23 it's of some significance to the overall compliance  
24 for this facility, the agency has the authority to  
25 file what's called a Notice of Violation or NOV,

1       isn't that correct?

2       A.   That's correct.

3       Q.   And would you describe what a NOV does, what  
4       it's designed to accomplish?

5       A.   NOV alleges the violation.  It documents the  
6       time and specific comments relative to the  
7       violation, and it's sent to the owner of the  
8       facility.

9       Q.   And does it -- doesn't it also tell the  
10      facility these are the things you need to do to  
11      remedy this violation?

12     A.   Not always.

13     Q.   Is there another mechanism -- enforcement  
14     mechanism that's a little higher in scale called a  
15     compliance order?

16     A.   Correct.  There is a compliance order.

17     Q.   And as the name implies, that is an order from  
18     the agency requiring a facility to do certain  
19     things in order to come into compliance, isn't that  
20     correct?

21     A.   That's correct.

22     Q.   Now, if we could take down this exhibit,  
23     please.

24               When you reviewed the HAPs air emissions study  
25     that we were just discussing, the 2003

1 notification, did you notice in that study the  
2 identification of a PRV in the by-products area?

3 A. I noticed --

4 MR. PIAGGIONE: Objection, your Honor.  
5 The witness testified that it was not --

6 THE COURT: First of all, it's not your  
7 witness, so the objections are reserved to  
8 Mr. Mango.

9 MR. PIAGGIONE: Oh, I'm sorry.

10 THE COURT: That's okay.

11 MR. MANGO: If I may have a moment, your  
12 Honor.

13 Your Honor, objection. The -- Mr. Linsin is  
14 mischaracterizing the evidence that -- the HAPs  
15 study. Mr. Linsin just said the notification that  
16 was received. This witness has said it wasn't a  
17 notification. He's referred to it as something  
18 that the DEC received. That's it. To phrase it as  
19 a notification, I think, goes against what the  
20 witness actually said.

21 THE COURT: Well, I mean, you can clarify  
22 on redirect. The jury has heard the evidence.  
23 Maybe you have a comment --

24 MR. LINSIN: I'm happy to rephrase the  
25 question, your Honor.

1 THE COURT: Okay.

2 BY MR. LINSIN:

3 Q. Before your visit to the facility in May  
4 of 2008, as I recall your testimony, you said you  
5 reviewed that HAPs air emission study that had been  
6 submitted in 2003, is that correct?

7 A. That's correct.

8 Q. And in your review of that HAPs air emission  
9 study, did you see the information contained in  
10 that study regarding a pressure relief valve in the  
11 by-products area?

12 MR. MANGO: Asked and answered, your  
13 Honor. Objection. We went over this.

14 THE COURT: I'll let it stand.

15 You may answer.

16 THE WITNESS: Yes, I did.

17 MR. LINSIN: All right. Your Honor, I  
18 would request an exhibit that's been marked for  
19 identification as Defendant's Exhibit QQQ.01 for  
20 identification.

21 THE COURT: Your paralegal will bring that  
22 up.

23 BY MR. LINSIN:

24 Q. Now, Mr. Carlacci, is -- does this photograph  
25 depict the by-products area at the Tonawanda Coke



1 facility?

2 A. Yes, it does.

3 Q. Is it substantially similar to the  
4 configuration of that part of the plant that you  
5 visited in May of 2008?

6 A. Seems to be.

7 MR. LINSIN: Your Honor, I move  
8 Defendant's Exhibit QQQ.01 into evidence.

9 MR. MANGO: I'd object, your Honor. It  
10 seems to be is not it is. We have no idea when  
11 this photograph was taken. Obviously, I don't  
12 think they're going to be able to establish this  
13 through this witness. I would object. Seems to be  
14 does not -- does not satisfy the government's view  
15 of the foundation.

16 THE COURT: Okay. And I'll sustain that  
17 objection.

18 You can continue your inquiry, though, and see  
19 if you can establish more.

20 MR. LINSIN: Does this photograph appear  
21 to be substantially similar to the part of the  
22 plant that you saw on May 28th 2008?

23 THE WITNESS: It appears to be.

24 MR. LINSIN: Your Honor, I move the  
25 exhibit into evidence.

1 THE COURT: Yeah.

2 MR. MANGO: No objection at this point.

3 THE COURT: Okay. I'll permit it, and it  
4 goes to weight in terms of the way it was?

5 (Defendants' Exhibit QQQ.01 was received  
6 into evidence.)

7 MR. LINSIN: May we publish this document  
8 to the jury?

9 THE COURT: Certainly. Certainly.

10 BY MR. LINSIN:

11 Q. Now, you -- in the lower right portion,  
12 right-hand portion of the photograph, do you  
13 observe a roadway, sir?

14 A. Yeah, I do.

15 Q. And is that the roadway that you testified  
16 about walking down during your visit?

17 A. Yes.

18 Q. And do you -- do you -- do you recall what that  
19 road happens to be called at the plant? Do you  
20 know if it has a name?

21 A. Everybody's got a name for that roadway.

22 Q. Have you ever heard it referred to as Broadway?

23 A. I heard it referred to as Broadway.

24 Q. All right.

25 THE COURT: Tap the roadway, please.

1 BY MR. LINSIN:

2 Q. And the larger structure in the right  
3 background -- right-hand background of the  
4 photograph, can you identify what that building is?

5 A. Seems that's the coal handling building.

6 Q. And is it correct, then -- just so we can  
7 orient the jury -- that the battery at the  
8 Tonawanda facility would be to the left, and -- as  
9 you're moving away in this photograph to the left  
10 of the coal handling building, and down the street,  
11 if you will, down Broadway?

12 A. Towards the stack.

13 Q. All right.

14 THE COURT: All right. Where's the coal  
15 handling building? Tap it.

16 Okay. And then as you move away from that,  
17 give us a line.

18 THE WITNESS: This is the battery.

19 BY MR. LINSIN:

20 Q. Now, you testified on direct examination about  
21 the -- your observations of the coke oven gas line  
22 when you were there at the plant. Do you see the  
23 coke oven gas line in this photograph?

24 A. This angle is not the same angle. I stood on  
25 the roadway. It's a little different looking this

1 way.

2 Q. Do you see the coke oven gas line in this  
3 photograph?

4 A. I'm going to say it's this orange line, is --  
5 is the main going back to the boiler house.

6 Q. All right. Would you mark it, then, on the  
7 photograph, please.

8 All right. And do you see the -- both the  
9 pressure relief valve and the stack from the  
10 pressure relief valve in this photograph?

11 And --

12 THE REPORTER: There was no answer.

13 BY MR. LINSIN:

14 Q. Did you -- did you tap the screen in the last  
15 instance where you saw the pressure relief valve?

16 A. Yes, I did.

17 Q. To the right-hand center of the photograph, is  
18 that correct?

19 A. Correct.

20 Q. Now, you were in the by-products area of that  
21 facility during your visit, is that correct?

22 A. At what time?

23 Q. On May 28th, 2008.

24 A. I was on that roadway.

25 Q. All right. And the components that are in the

1 foreground in this photograph, and to the left-hand  
2 side of the photograph, are those part of the  
3 by-products area?

4 A. Yes.

5 Q. And you testified on direct examination that  
6 you observed the flanges and couplings in the coke  
7 oven gas line as having stains and potential  
8 corrosion, is that correct?

9 A. That's correct.

10 Q. So you looked at that coke oven gas line when  
11 you were there?

12 A. There's many lines in this area here that are  
13 not depicted in this picture. I looked at -- I  
14 looked at the whole -- at the whole area.

15 Q. But it's your testimony here today that even  
16 though you had seen the HAPs air emission study  
17 before you went out to the plant in May of 2008,  
18 and even though you stood on this roadway and  
19 looked at the coke oven gas line, and even though  
20 you were there to look for potential sources of  
21 benzene emission, you didn't see this pressure  
22 relief valve and the stack that is in the  
23 right-hand center of this photograph?

24 A. I didn't notice it.

25 Q. Can we take this photograph down, please.

1           Could I have Government Exhibit 18.18, please.

2           Mr. Carlacci, do you recognize this exhibit  
3           which is now in evidence as the permit that was  
4           issued by DEC to Tonawanda on May the 2nd of 2002?

5           A. This is part of the transmittal letter, yes.

6           Q. And could we proceed to the second page of this  
7           document, please? And zoom in to the top third of  
8           the page. The effective date for this permit was  
9           April 30th, 2002, correct?

10          A. Correct.

11          Q. And the expiration for -- just so we can orient  
12          ourselves. The actual application for this permit  
13          had been filed by Tonawanda back in 1990, correct?

14          A. Correct.

15          Q. All right. And the DEC reviewed the  
16          application, considered the application for  
17          approximately a five-year period before the permit  
18          was issued, correct?

19          A. We had it in our hands for that five-year  
20          period.

21          Q. And this permit, as with all Title V permits,  
22          have or has a five-year expiration period, is that  
23          correct?

24          A. That's correct.

25          Q. And so the expiration date for this permit

1 originally issued in April of 2002 was May the 1st  
2 of 2007, correct?

3 A. That's correct.

4 Q. All right. And the application --  
5 reapplication for a permit has to be filed 180 days  
6 before the expiration of the permit itself, is that  
7 correct?

8 A. Within 180 days. No later than six months.

9 Q. All right.

10 A. How many days is that, right?

11 THE COURT: Say that again.

12 THE WITNESS: It's three months. No later  
13 than six months prior to the expiration date, the  
14 permit is due. There is another one in front of  
15 it. I'd have to quote the rule. We don't want it  
16 too soon, is the -- is the reason for the  
17 earlier -- the larger number.

18 BY MR. LINSIN:

19 Q. All right. And so I'll use months instead of  
20 days. The -- the requirement is they have to  
21 reapply for a new permit six months before the  
22 original permit expires?

23 A. Correct.

24 Q. And could I, please, have Government  
25 Exhibit 18.08. First page. I'm sorry. 18.06. My

1 mistake.

2 And you recognize this as the document in  
3 evidence, the renewal submittal, for the Title V  
4 permit application? For the Title V -- the renewal  
5 of the Title V permit.

6 A. Yes.

7 Q. Submitted October 20th, 2006, correct?

8 A. Correct.

9 Q. And that's just over six months before this  
10 permit would have expired, correct?

11 A. Correct.

12 Q. Now, could I have 18.18 again. And if we could  
13 go to 18-009, please. And if we can enlarge the  
14 top half of the page.

15 This is condition 4 of Tonawanda's Title V  
16 permit condition, correct? Permit, correct?

17 MR. MANGO: Objection, your Honor. This  
18 is not the condition 4 that I showed Mr. Carlacci.

19 MR. LINSIN: I'm well aware of that, your  
20 Honor.

21 THE COURT: This is 18.08, right?

22 MR. LINSIN: This document is in evidence,  
23 your Honor, yes.

24 THE CLERK: 18.18.

25 MR. LINSIN: This is 18 -- 18.18.



1 THE COURT: Oh, 18. Okay.

2 Okay. So the -- the objection is what?

3 MR. MANGO: Your Honor, this is not the  
4 condition 4 that I showed him, so the objection is  
5 to -- Mr. Linsin's referencing condition 4 of the  
6 Title V permit. That's -- that's not condition 4  
7 that I showed this witness.

8 THE COURT: Okay. All right. You want to  
9 proceed?

10 MR. LINSIN: Thank you, your Honor.

11 BY MR. LINSIN:

12 Q. This is -- as -- can you read the third line of  
13 this document?

14 A. The third line or the --

15 Q. Third line from the top of this page.

16 A. Department requires any renew, modification  
17 or --

18 MR. LINSIN: I'm sorry.

19 THE COURT: You can tap the screen.

20 BY MR. LINSIN:

21 Q. Can you read that line?

22 A. Condition 4?

23 Q. Yes.

24 A. Applications.

25 Q. What's the title, please, of condition 4?

1 A. Applications for Permit Renewals and  
2 Modifications. Applicable State Requirement 6  
3 NYCRR 621.13.

4 Q. And what is item 4.1 under condition 4?

5 A. Describes submission of an application.

6 Q. And 4.2?

7 A. Describes the submission for renewal  
8 application.

9 Q. Within 180 days before the expiration, correct?

10 A. Correct.

11 Q. And you just testified that Tonawanda and Mark  
12 Kamholz submitted a renewal application for their  
13 Title V permit within 100 days -- sorry --  
14 before -- 180 days before the expiration, correct?

15 A. Correct.

16 Q. So Tonawanda and Mark Kamholz satisfied this  
17 condition 4 in their permit, didn't they?

18 A. Yes.

19 Q. Now, can we move, please, to 0016 of this same  
20 document. And if you could enlarge the top half of  
21 the page, please.

22 All right. Now, you recognize there another  
23 condition 4 that you testified about on direct  
24 examination, correct?

25 A. Correct.

1 Q. And I believe your testimony was -- and tell me  
2 if I have this inaccurately -- that, in your  
3 opinion, the pressure relief valve that existed at  
4 Tonawanda, the failure to seek a permit for that  
5 valve was a violation of this condition in its  
6 Title V permit, is that correct?

7 A. That's correct.

8 Q. All right. If we could enlarge, please, the --  
9 well, first of all, could you read the title of  
10 this condition?

11 A. Unpermitted emission sources.

12 Q. Now, you have talked in your direct testimony  
13 about emission sources and emission points,  
14 correct? Is that correct?

15 A. Yes.

16 Q. If I recall your testimony yesterday, you said  
17 that those terms were essentially interchangeable,  
18 is that correct?

19 A. They're difficult to describe, but an emission  
20 source would be the source of emissions. The  
21 emission point would stay in that, and the pressure  
22 relief valve would be the stack.

23 Q. Mr. Carlacci, an emission source is different  
24 than an emission point, isn't it?

25 A. If you only have one emission source and one

1 emission point, it would be one in the same  
2 described.

3 Q. I'll ask the question again.

4 Is an emission source different than an  
5 emission point?

6 A. Depends on the situation.

7 Q. Are they listed separately?

8 A. Yes.

9 Q. Identified separately?

10 A. Yes.

11 Q. Differing identification numbers?

12 A. Yes.

13 Q. So they're different, correct?

14 A. You could call them different.

15 Q. And this condition relates to unpermitted  
16 emission sources, correct?

17 A. Correct.

18 Q. Now, could I direct your attention, please, to  
19 item 4.1? And if you can read the first line of  
20 4.1. I don't believe you testified about this  
21 portion of the condition on your direct, but could  
22 you read -- could you highlight that first partial  
23 paragraph. Yes. Go ahead.

24 A. "If an existing emission source was subject to  
25 the permitting requirements of 6 NYCRR Part 201 at

1 the time of construction or modification, and the  
2 owner and/or operator failed to apply for a permit  
3 for such emission source, then the following  
4 provisions apply."

5 Q. All right. So this condition of the facility's  
6 Title V permit is saying that if these conditions  
7 that you've just read existed, then the owner or  
8 operator has to do certain things. And those are  
9 listed in subpart (a) and subpart (b), correct?

10 A. Correct.

11 Q. So let's take a look at those individually.  
12 And by the way, the reference to 6 NYCRR, Part 201,  
13 that is Chapter 6 of the New York Code of  
14 Regulations, is that correct?

15 A. Code of Rules and Regulations, correct.

16 Q. Part 201 relates to what?

17 A. Operating permits.

18 Q. All right. And so the condition upon which  
19 this condition is determined is whether the  
20 emission source was subject to permitting  
21 requirements under New York State rules at the time  
22 of construction, number one, or at the time of  
23 modification, correct?

24 A. Correct.

25 Q. All right. So, in order to determine whether

1       this PRV valve out on the coke gas line was  
2       required -- was subject to permitting requirements,  
3       you have to know when it was constructed, don't  
4       you?

5       A.   Correct.

6       Q.   Do you know when that PRV was constructed, sir?

7       A.   No, I do not.

8       Q.   The date it was constructed would determine  
9       which regulations were applicable to determine  
10      whether it was subject to permitting requirements  
11      at that time, wouldn't it?

12      A.   Yes.

13      Q.   And as you've just testified, the regulations  
14      that we're talking about here that define the  
15      permitting requirements have changed over time,  
16      correct?

17      A.   Yes.

18      Q.   Now, it's as either at the time of construction  
19      or modification. And do you know whether that term  
20      "modification" is defined anywhere?

21      A.   Yes, it is.

22      Q.   It is where?

23      A.   In either Part 200 or 201.

24      Q.   Okay. And do you recall what that definition  
25      is? What does "modification" mean?

1 A. You know, we can read it right from the  
2 definition, if you like.

3 Q. Well, we may get there. But before we do that,  
4 I'm wondering if you know what it means.

5 A. I do know it. It has to do with a modification  
6 of a process with an increase in emissions -- that  
7 results in an increase in emissions, in short, is  
8 what you're looking for.

9 Q. A modification of a process?

10 A. Process or source.

11 Q. What's a process?

12 A. The words were interchanged as the permits  
13 change. You know, because Air 100s looked at  
14 emission points, and then as 201 changed, it looked  
15 at the sources. You know, it separated the sources  
16 from emission points.

17 Q. Let's use the term "process", sir. What does  
18 process mean?

19 A. The source, the process that's making the  
20 emissions.

21 Q. All right. Now, a process is -- if I recall  
22 your testimony on direct, you described -- you  
23 described the light oil scrubber as a process,  
24 correct?

25 A. Yes, I did.

1 Q. Because it is a component in which something  
2 happens, something is changed or altered, or there  
3 is something going on in that -- in that vessel or  
4 component to create a process, correct?

5 A. Correct.

6 Q. And a process is distinct from event, isn't it?

7 A. Yes.

8 Q. Now, let me ask you and -- let me ask you if  
9 this is consistent, the definition -- the words I'm  
10 about to read is consistent with your understanding  
11 of the word "modification." Okay?

12 Any physical change or change in the method of  
13 operation of an incinerator, number one, a  
14 stationary combustion installation, or a process,  
15 which increases hourly emissions or involves  
16 installation of air cleaning components.

17 MR. MANGO: Your Honor, I'm going to  
18 object and ask for clarification on what we're  
19 reading from, so that the witness has a clue as to  
20 where this definition is coming from.

21 MR. LINSIN: I'm happy to identify it,  
22 your Honor. I was --

23 BY MR. LINSIN:

24 Q. Is the language I just read consistent with  
25 your understanding of the definition of the term



1 "modification" as it existed in 6 NYCRR 200.1 at  
2 the time Title V became effective in New York  
3 State?

4 A. Yes.

5 Q. So for condition 4 to apply, you either have to  
6 know when a -- an emission source was  
7 constructed -- and you've testified you don't know  
8 when that happened with regard to this PRV -- or if  
9 it was modified in terms that comply with that  
10 definition, correct?

11 A. Correct.

12 Q. Do you know when this PRV was modified?

13 A. I don't know when it was modified. But if it  
14 was used as an emission, if it emitted pollutants,  
15 it needed a permit.

16 Q. Now, you're repeating that opinion again. But  
17 what I'm trying to do right now is stay with the  
18 wording in the condition of the facility's Title V  
19 permit.

20 And you've testified you don't know when it was  
21 constructed, and you don't know when it was  
22 modified.

23 A. Correct.

24 Q. And so your opinion that you've expressed now  
25 several times, that this was a violation of the

1 permit, is based upon an absence of knowledge  
2 concerning these two factors in condition 4,  
3 correct?

4 A. It needed to be identified in the initial  
5 permit. This is for those that were missed. This  
6 applies to those that were not included in the  
7 initial permit. And you have now new construction  
8 and modification, this would apply, right.

9 Q. This would apply as -- if you've read the terms  
10 correctly, this applies, am I not correct, for  
11 permitting requirements that existed at the time  
12 the source was constructed or modified, correct?

13 A. Correct.

14 Q. And without knowing when a source was  
15 constructed or modified, you can't really properly  
16 apply this condition, can you?

17 A. I can. Because 201 initially required a permit  
18 for every emission point, then it would have  
19 required a permit to begin with and would have been  
20 included in Title V. As you go down then, and you  
21 find -- you build a new source, a new -- new --  
22 construct a new source, or modify one that's in  
23 your Title V, this is what applies.

24 Q. The rules for what's required to be permitted,  
25 as we've said, have changed over time, correct?

1 A. Yes.

2 Q. And they were different in the 1980s, were they  
3 not?

4 A. Yes.

5 Q. I'm sorry. And as a matter of fact, the  
6 definition of exempt sources back in the '80s  
7 included emergency relief vents, correct?

8 A. Most likely. You'd have to look at that rule  
9 in the '80s.

10 Q. Is that consistent with your memory?

11 A. That is.

12 Q. And isn't it true that it is possible -- well,  
13 no, let me ask this a different way.

14 I would like to ask you this hypothetical. If  
15 a component is installed in a facility and it  
16 complies with an exemption that exists at that  
17 time, and the operation of that component then  
18 changes over time, you have to know how it's  
19 changed and when it's changed in order to evaluate  
20 whether it's still exempt or not, correct?

21 MR. MANGO: Objection to that question.  
22 It seemed like a compound question to me. There  
23 was --

24 THE COURT: Do you understand the  
25 question?

1           THE WITNESS: Repeat it, and we'll give it  
2 another shot.

3           MR. LINSIN: All right.

4 BY MR. LINSIN:

5       Q. If a component is exempt under the rules when  
6 it is installed, exempt from permitting  
7 requirements, in order to know whether that -- and  
8 the operation of that component changes over time,  
9 you have to know when that change occurs and what  
10 that change was in order to know whether the  
11 component has lost the exemption or whether it  
12 still retains the exemption, don't you?

13       A. Yes. I can agree with that.

14       Q. All right. And you don't know that about this  
15 pressure relief valve in the by-products area in  
16 Tonawanda, do you?

17       A. Not needed because the 201 requirements  
18 required it to be identified in the Title V  
19 application. And then this would apply for any new  
20 construction thereafter.

21       Q. Now, you're saying title -- you're saying it  
22 was required -- it was required to be reported  
23 under the Air 100 regulations, correct?

24       A. If it was not exempt on the -- on the 201 when  
25 Air 100s were applicable, you would have a permit

1       then, an Air 100.

2       Q.   Yes.   That's if it was not exempt.

3       A.   Correct.

4       Q.   All right.   But if it was exempt --

5       A.   -- it wouldn't need a permit.

6       Q.   -- it wouldn't need a permit, correct.

7               You testified on direct examination before  
8       lunch that when you visited the Tonawanda plant  
9       in 2011, that you saw the pressure relief valve in  
10      the by-products area.   And you also testified that  
11      you saw a strip chart, if I recall your term, a  
12      strip chart -- strip chart that showed gas  
13      releases.   Do you recall that testimony?

14     A.   I recall that testimony and, you know, it  
15     was -- my recollection wasn't perfect, I guess, if  
16     that's what we're going to get at here.

17     Q.   Well, did you see a strip chart when you were  
18     at the plant in 2011?

19     A.   I was forwarded strip charts from that process  
20     by the Department of Justice.   I recall seeing  
21     strip charts for that bleeder valve.   And I recall  
22     in 2011, when I -- when that was pointed out to me  
23     going into the building where this circular  
24     chart -- actually, it's a circular chart -- was  
25     maintained.   I can't say that there was a circular

1 chart there that was used, or if it was just a  
2 blank -- a clean chart there, now that my memory is  
3 coming back to me on that particular piece.

4 Q. Your memory was refreshed over lunch?

5 A. No, as we talked -- as I talked about it here,  
6 I'm thinking exactly what did I see, and that's  
7 what came -- you know, that's what's coming to me  
8 here.

9 Q. So let's see what your current recollection is.

10 A. Okay.

11 Q. In 2011, did you review circular charts in the  
12 by-products area at the coke facility?

13 A. No, I did not.

14 Q. So at some other time you've seen circular  
15 charts from the by-products area?

16 A. Yes.

17 Q. That the Department of Justice has provided to  
18 you?

19 A. Yes.

20 Q. And you testified that you reviewed these  
21 charts and they showed gas releases, if I recall  
22 your testimony, is that correct?

23 A. They showed spikes in -- in -- in gas value, in  
24 pressure.

25 Q. Okay. Can you describe -- do you know how

1       these charts are recorded?

2       A.   There is a device that measures the pressure on  
3       the gas and records it on a circular chart.

4       Q.   And the chart itself turns over time, is that  
5       correct?

6       A.   Correct.

7       Q.   And so over a 24-hour period you wind up with a  
8       tracing that records pressure in the line that's  
9       being monitored, correct?

10      A.   Correct.

11      Q.   Do you know, from looking at the charts that  
12      you reviewed, whether those charts indicate there  
13      was any release of gas from the coke oven gas line?

14      A.   There was no documentation on it as to what the  
15      pressure setting was.

16      Q.   What the pressure setting of what was?

17      A.   Of the -- of the valve, that it would open.   So  
18      I can't say.

19      Q.   Of the pressure relief valve?

20      A.   The pressure relief valve.

21      Q.   So the circular charts you reviewed recorded  
22      line pressure --

23      A.   Line pressure.

24      Q.   -- but did not record the set point, the  
25      release set point for the pressure relief valve,

1 correct?

2 A. Correct.

3 Q. And do you know what the range of pressure was?

4 Do you recall what it was in those charts you  
5 measured -- you looked at?

6 A. Some -- some of the ranges were around 80 and  
7 some were around 120. And I thought it was in --  
8 in units of an oil. I'm trying to recall.

9 Q. Would -- would it fit with your recollection  
10 that it -- that the measurements on those circular  
11 charts are in centimeters of oil?

12 A. It could be it.

13 Q. About 80 -- between 80 centimeters of oil and  
14 100, 120 centimeters of oil. And do you know what  
15 that means?

16 A. It's a measure of -- of pressure.

17 Q. And do you understand it to mean a measure of  
18 pressure that would overcome the resistance of a  
19 column of oil of a certain height?

20 A. Right. Of 80 centimeters of oil.

21 Q. Eighty to 120?

22 A. Right.

23 Q. And do you know what the -- the conversion  
24 value is -- would be for centimeters of oil to  
25 pounds per square?



1 A. I don't know it, but I had staff go through  
2 that calculation, and I believe it was around the  
3 value that you mentioned earlier.

4 Q. All right. Would it fit with your  
5 understanding that approximately 85 centimeters of  
6 oil equates to 1 pound per square inch?

7 A. If you did the math, I'll agree with that.

8 Q. Does that fit with your recollection, sir?

9 A. I think around that area.

10 Q. Mr. Carlacci, you testified on direct  
11 examination that you, and I presume your colleagues  
12 in DEC, had become concerned about potential  
13 sources for benzene emission --

14 Can we take this exhibit down, please?

15 -- potential sources of benzene emissions in  
16 the Tonawanda area around 2006 and had begun  
17 sampling in 2006, is that correct?

18 A. Correct.

19 Q. And then you initiated a study in 2007,  
20 correct?

21 A. Correct.

22 Q. And then you eventually went to visit the  
23 facility in May of 2008?

24 A. Correct.

25 Q. All right. And you've already testified that

1 before you went to the facility in May of 2008 that  
2 you reviewed this HAPs emission study that had been  
3 submitted by the facility before in 2003, correct?

4 A. Correct.

5 Q. Did you review any other documents in the file  
6 that had existed in -- in DEC's file for this  
7 facility before going out in May of 2008?

8 A. There was quite a few of us that reviewed the  
9 file. I did page through the file looking at  
10 different applicable regs. Albany was involved in  
11 calculating emissions and estimating them also to  
12 check those -- that study. They modeled the  
13 emissions from the facility, so they can predict  
14 the outcome downwind.

15 Q. My question was what you reviewed. What did  
16 you review before you went to the site in May  
17 of 2008?

18 A. I reviewed the permit. I reviewed the Air  
19 100s. I reviewed the applicable regulations. I  
20 looked at that study.

21 Q. Did you review the records of the inspection  
22 reports for this facility over the years?

23 A. Yes, I looked through them.

24 Q. You did, okay. And your objective in going to  
25 the facility in May of 2008 was to identify this

1 concern to the facility and see if there were any  
2 things you could identify or they could help you  
3 identify that might be potential sources for these  
4 elevated benzene readings, correct?

5 A. Correct.

6 Q. Now, what time of day did you get there on  
7 May 28th, 2008?

8 A. 9:30, 10 o'clock.

9 Q. Do you have a -- any record of that?

10 A. I don't recall if I wrote it down in my notes  
11 or not.

12 Q. And from start to finish, how long did you stay  
13 at that facility on May 28th, 2008?

14 A. Not -- not very long. I think it was a short  
15 meeting in the office and a relatively short walk  
16 down through the plant.

17 Q. Can you estimate the time you spent there?

18 A. Maybe an hour, hour and a half.

19 Q. All right. You testified on direct, as I wrote  
20 it down, that you couldn't stay very long. Do you  
21 recall that testimony?

22 A. Yes.

23 Q. Now, did anybody at Tonawanda tell you that the  
24 time there was limited?

25 A. No.

1 Q. Did anybody tell you there was any particular  
2 part of the plant you couldn't go to?

3 A. No.

4 Q. So the time limitation you're talking about  
5 came from where?

6 A. From us. We had other commitments.

7 Q. And so you deemed it important enough to stay  
8 at this facility for an hour or an hour and a half,  
9 correct?

10 A. That's the amount of time we had to -- to meet  
11 with Mark and present this data.

12 Q. All right. And you said you met with  
13 Mr. Kamholz. And did you meet with anybody else at  
14 the plant?

15 A. I think Mr. Kamholz was the only guy we met  
16 with on that day.

17 Q. All right. And did he -- did you request or  
18 did Mark suggest that you go to the by-products  
19 area? How did that idea come up?

20 A. I asked that we take a walk by the by-products  
21 area.

22 Q. And why did you request to go to the  
23 by-products area?

24 A. You know, to learn more about the by-products  
25 area, to see if there was anything that I can

1 identify that may help find sources of emissions.

2 Q. Is it because you thought that the by-products  
3 area, based on your knowledge of -- of coke oven  
4 facilities, the by-products area was a potential  
5 area where you might identify benzene sources?

6 A. No. It could have been the oven. I asked for  
7 pushing records as well while we were in that  
8 meeting. It was just to look at that facility as a  
9 whole.

10 Q. Other than the by-products area, did you visit  
11 any other part of the plant?

12 A. We looked at the ammonia still and the  
13 by-products area. We didn't go any further than  
14 that.

15 Q. So you didn't visit the oven?

16 A. No.

17 Q. You didn't visit the boiler?

18 A. No.

19 Q. You didn't visit the coal fields?

20 A. Not on that day, no.

21 Q. Didn't visit the boiler house?

22 A. Correct.

23 Q. This was the one area that you requested to  
24 visit?

25 A. Correct.

1 Q. All right. And how many representatives of DEC  
2 were with you on that visit?

3 A. Three others.

4 Q. Three others. So four DEC representatives.  
5 And how long was the meeting in Mark's office that  
6 morning?

7 A. It was the majority of the time, I would say.

8 Q. Do you recall, sir?

9 A. I'm going to take a guess it was 45 minutes.

10 Q. My question is, and I ask you not to guess --

11 A. Okay.

12 Q. -- because this is important --

13 A. Okay.

14 Q. -- do you recall how long you stayed in Mark's  
15 office that day?

16 A. No. I don't recall exactly the minutes.

17 Q. Could you recall approximately how long you  
18 stayed in Mark's office?

19 A. Forty-five minutes, I would say.

20 Q. All right. And so you spent another 45 minutes  
21 in the by-products area before you left?

22 A. We drove into the plant, met at the plant,  
23 drove down to the by-products area. All of that  
24 I'm going to guess was around an hour and a half,  
25 two hours. Maybe less.

1 Q. How long do you recall staying in the  
2 by-products area?

3 A. Probably was maybe 20 minutes. That -- that  
4 walk, you know, from start to finish, maybe 25.

5 Q. So there are four DEC representatives in the  
6 by-products area at the plant for at least 20  
7 minutes, you're saying, is that correct?

8 A. Yes.

9 Q. And could I have Defendant's Exhibit Q --  
10 QQQ0.01 already in evidence back up?

11 So your testimony, Mr. Carlacci, is that on May  
12 the 28th -- do you recall what the weather was that  
13 day, by the way?

14 A. I had a jacket on, so it was a little cool.

15 Q. All right. Was it raining?

16 A. No, it wasn't raining. I think the sun was --  
17 partly cloudy.

18 Q. All right. And your testimony is that four  
19 representatives of DEC were in this by-products  
20 area after having reviewed a HAPs emission study  
21 that said there was a PRV in this by-products area.  
22 And your testimony is that you didn't see this PRV  
23 that is in the right center portion of this  
24 photograph, is that correct?

25 A. We were on the roadway, not in the by-products

1 area, and we did not identify that source.

2 MR. LINSIN: Your Honor, I don't have much  
3 more, but I don't want to -- it might be a lot more  
4 efficient if -- if this would be a convenient time  
5 to break and -- and permit -- permit me to finish  
6 up in the morning.

7 THE COURT: Absolutely. It's great  
8 timing. Thank you.

9 MR. LINSIN: Thank you.

10 THE COURT: We'll do that. We'll break.  
11 Tomorrow, Ms. Labuzzetta, 9:30 again?

12 Okay. We're going to do 9:30 again tomorrow.  
13 Please keep your minds open. Don't lose sight of  
14 the fact that this is very important case for both  
15 sides. Don't do any independent investigation.  
16 Don't read any articles. I mean, there are  
17 articles in the newspaper that relate to  
18 contaminants and toxic matters and the like, so  
19 stay away from anything that has any relationship  
20 to the subject matter of this case, even though  
21 it's not specifically about this case. Don't talk  
22 about it with anybody. Don't go to the Internet or  
23 any electronic facility to enhance your knowledge.  
24 You'll get everything you need here. I mean, you  
25 got to amaze yourself in terms of what you have



1 already learned, right? And it will be that way.  
2 It will be a -- a work in process, but you'll get  
3 it all here. So remember the application of common  
4 sense, experience, intelligence. It won't  
5 overwhelm you, you'll get it. There is a lot to do  
6 here yet. I think we're making progress.  
7 Everybody is trying. It's great to have you  
8 cooperating with us, and we'll see you next month  
9 at approximately what time?

10 THE JURY: 9:30.

11 THE COURT: Okay. Thank you very much.

12 (Jury excused from the courtroom.)

13 THE COURT: Okay. Thank you. You may  
14 step down. Anything that we need?

15 MR. PIAGGIONE: Your Honor, I apologize  
16 for standing up and objecting. In my own defense,  
17 I did ask Mr. Mango am I permitted to object with  
18 his witness, he said yes. So he set me up.

19 THE COURT: Between you and me, he's done  
20 that before. He sets you up, okay, so there must  
21 have been something you did in the past that he was  
22 trying to get back at you for. But, in any event,  
23 that's not a problem, Mr. Piaggione. We'll see  
24 everybody tomorrow about 9:30. Thank you very  
25 much.

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CERTIFICATION

I certify that the foregoing is a  
Correct transcription of the proceedings  
Recorded by me in this matter.

s/Michelle L. McLaughlin  
Michelle L. McLaughlin, RPR  
Official Reporter  
U.S.D.C., W.D.N.Y.